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THE NATIONAL TRIBUNE

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SOLDIER'S HANDBOOK.

Pensions and Other Laws and Rulings of Interest to Soldiers and Sailors and Their Heirs.

PUBLISHED BY
THE NATIONAL TRIBUNE,
WASHINGTON, D. C.

Gift of
James H. Russell

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ARE ENTITLED

PENSIONS, INCREASE,

BOUNTY, PAY,

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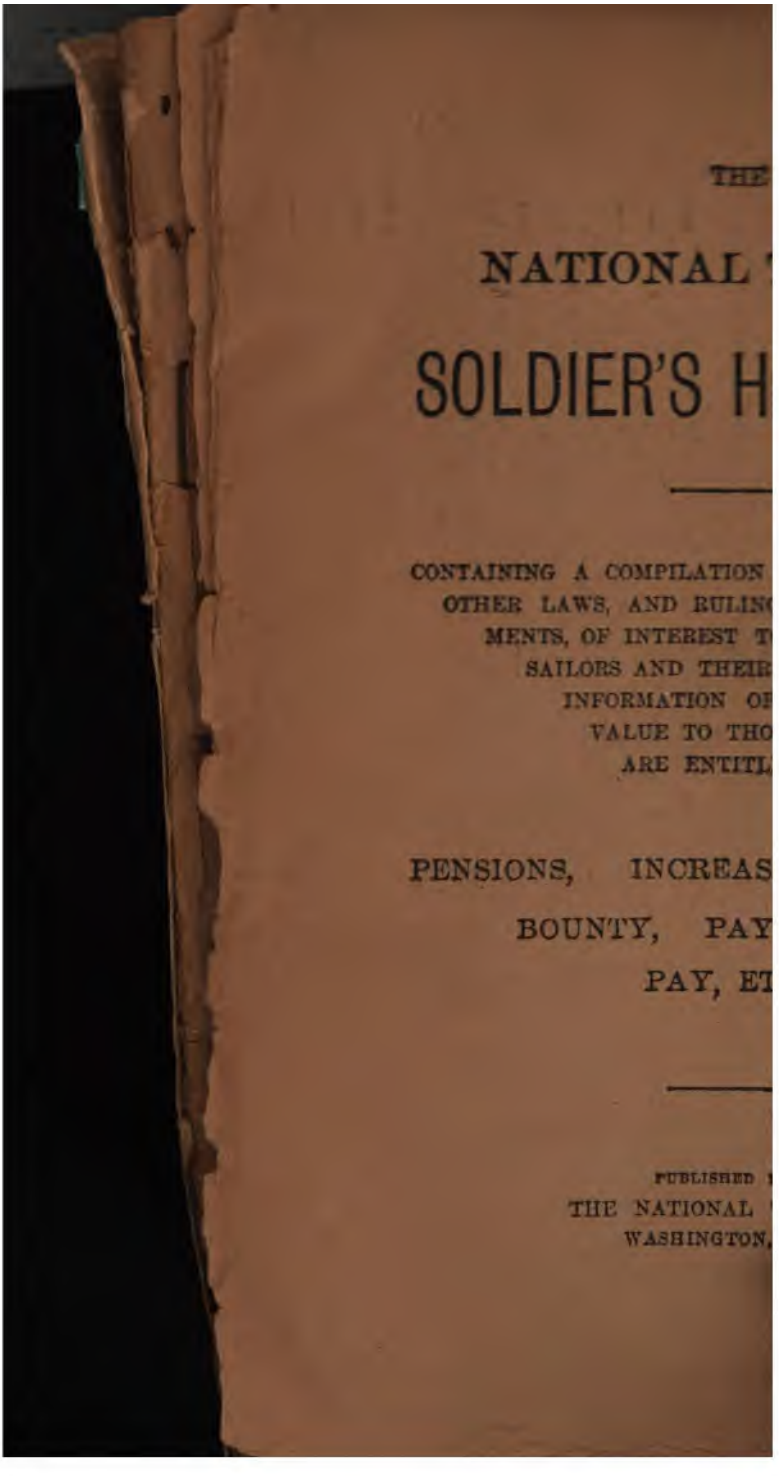

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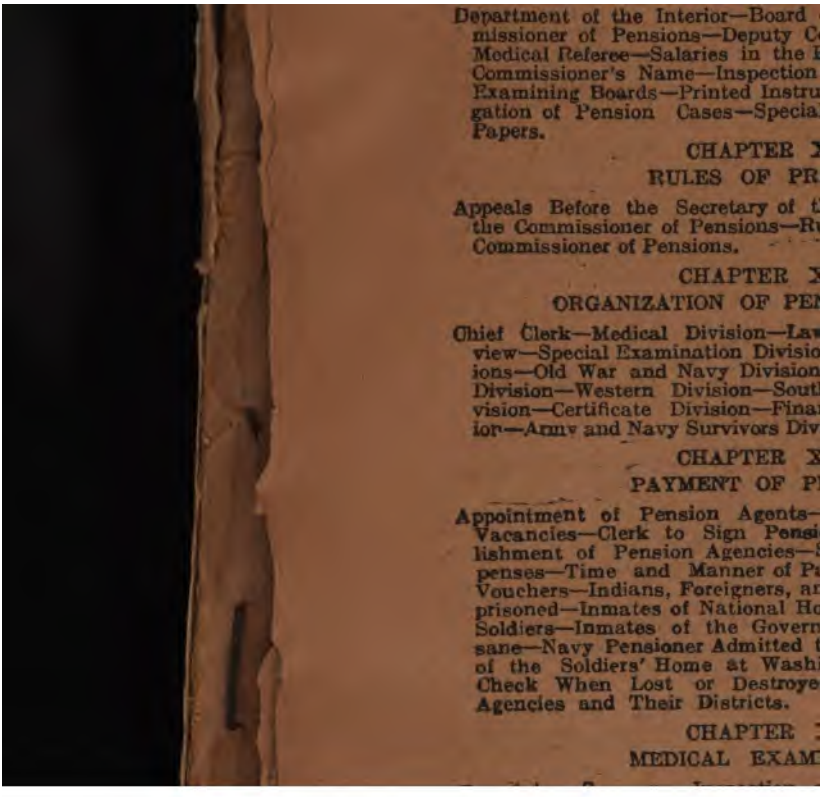

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CHAP

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First U. S. Pension Law—The
First Provision for Widows
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of the Revolution—Early In
Mexican War—The Navy.

The First U. S

The first "pension la
was a resolution adopte
Continental Congress, si
is as follows:

"Whereas in the cou
some commissioned and
cers of the Army and N
diers, marines and sean
be otherwise so disabled
ing in the Army or Nav
hood, and may stand in

"1. Resolved, That ev
non-commissioned offic
who shall lose a limb in

led in the service of the United States or
ica, as to render him incapable afterwards
ting a livelihood, shall receive, during his
r the continuance of such disability, the
alf of his monthly pay from and after the
that his pay as an officer or soldier ceases;
paid by the committee as hereafter men-
l.

That every commander of any ship of war or
l vessel, commissioned officer, warrant offi-
narine, or seaman, belonging to the United
s of America, who shall lose a limb in any
gement in which no prize shall be taken, or
erein otherwise so disabled as to be rendered
able of getting a livelihood, shall receive
g his life, or the continuance of such dis-
y, the one-half of his monthly pay, from and
the time that his pay as an officer or marine
aman ceases; to be paid as hereafter men-
l. But, in case a prize shall be taken at
ime such loss of limb or other disability
happen, then such sum as he may receive
f the net profits of such prize, before a divi-
is made of the same, agreeably to former
s of Congress, shall be considered as part of
alf pay, and computed accordingly.

That every commissioned officer, non-com-
oned officer, and private soldier, in the
, and every commander, commissioned offi-
warrant officer, marine, or seaman of any of
hips of war, or armed vessels belonging to
United States of America, who shall be
ded in any engagement, so as to be ren-
l incapable of serving in the Army or Navy
gh not totally disabled from getting a liveli-

hood, shall receive such monthly
be judged adequate by the asse
representative body of the State
longs or resides, upon applicat
that purpose; provided the sam
his half pay.
"4. Provided, That no commi
commissioned officer, and p
Army, commander, commis
rant officer, marine, or se
ships of war, or armed ve
United States of America
or disabled as aforesaid
half pay or other allow
to the committee or o
the same, in the St
longs, or to the ass
such State, a certi
officer, who was in
he was so wound
from some other
the surgeon the
from the comm
vessel engage
cer, marine,
from the sur
of the pers
partment,
armed ve
rank th
what a
"5. T
sembl
of A
thei

ll such certificates as may be presented
, and register the same in a book, and
at support is adjudged by the assembly
ative body of their State, to those whose
uires but a partial support, and also of
ment from time to time of every half pay
er allowance, and of the death of such
person, or ceasing of such allowance,
ll make a fair and regular report of the
uarterly to the Secretary of Congress or
war, where a separate record shall be
he same.
at it be recommended to the assemblies
lative bodies of the several States, to
ayment to be made of all such half pay
allowances as shall be adjudged due to
ons aforenamed on account of the United

vided, That all such officers and soldiers
y be entitled to the aforesaid pension,
found to be capable of doing guard or
duty, shall be formed into a corps of
, and subject to the said duty; and all
marines, and seamen of the Navy who
entitled to the pension aforesaid, and
found capable of doing any duty on
e Navy, or any department thereof, shall
to be so employed."

solution of September 25, 1778, the bene-
he foregoing were extended to all dis-
the service before August 26, 1776, and
he commencement of hostilities on the
pril. 1775."

The First Servic

Under date of January
Washington, Commander-
can Armies, submitted t
gress a statement in whi
ing:

"As I consider a prope
vision for officers, in a n
every other regulation and
to be made, since withou
exist, and unless some
place those of ours in a m
few of them would be abl
in it.

"I shall begin with a
to prove the necessity
lishment.' * * * At
the dispute—in the first
and looking upon the ser
rary, they entered into i
regard to pecuniary or self
finding its duration to be
at first suspected, and t
any advantage from the
to which they were expo
trary, were losers by their
short even of a competenc
they have gradually abat
with many, an entire disi
ice under its present circ
place. * * * It is
with reason or justice, to

nd happiness, encounter the rigors of the
he perils and vicissitudes of war, to ob-
ose blessings which every citizen will en-
common with them, without some ade-
compensation. It must also be a comfort-
flection to any man, that, after he may
contributed to securing the rights of his
y, at the risk of his life and the ruin of his
, there would be no provision made to pre-
imself and family from sinking into indi-
and wretchedness. Besides adopting some
l to make the provision for officers equal
r present exigencies, a due regard should
d to futurity. Nothing, in my opinion,
serve more promptly to reanimate their
shing zeal, and interest them thoroughly
service, than a Half-Pay Establishment.
would not only dispel the apprehension of
al distress, at the termination of the war,
aving thrown themselves out of professions
nployments, they might not have it in their
to resume; but would, in a great degree,
the painful anticipation of leaving their
s or orphans a burthen on the charity of
country, should it be their lot to fall in its
.

m earnest in recommending this measure,
se I know it is the general wish and expec-
; and that many officers, whom, upon
principle we should wish to retain in the
, are only waiting to see whether some-
of the kind will, or will not, take place, to
ermined in their resolutions, either of stay-
or quitting it immediately; and I urge my
ients with the greater freedom because I

cannot, and shall not, recei
fit from the Establishment, a
inducement for proposing i
tion of its utility and proprie
"I am sensible the expe
objection to it; but to this I
The officers are now discon
uation. If some general e
braced, to remove this disc
desertion of the service will
discouragement be cast
main, as must wound it in
ner. Everything that has
dency, at least, to protract
dictated by a well intended
in the end, prove erroneous

As a result, Congress pas
following resolution providi
pension in the history of
the United States:

"Resolved unanimously,
cers commissioned by Cong
hereafter may be, in the s
States, and shall continu
war, and not hold any offic
States, or any of them, shal
of the war, be entitled to rec
term of seven years, if th
half of the present pay of s
That no general officer of th
infantry, shall be entitled to
one-half part of the pay
corps respectively: And pro
lution shall not extend to a

e United States, unless he shall have
oath of allegiance to and shall actually
hin some one of the United States."

lution of October 21, 1780, this half pay
nued during life. Subsequently, by res-
March 22, 1783, the officers, collectively,
several States, were allowed the choice
y for five years after the termination of
ices, instead of half pay for life.

t Provision for Widows and Children.

til August 24, 1780, was provision made
s and orphans of soldiers of the Revo-
Army, and then only for those of mili-
ers. The resolution adopted by Con-
as follows:

ved, That the resolution of the 15th day of
, granting half pay for seven years to the
the Army who should continue in service
d of the war, be extended to the widows
officers who have died, or shall hereafter
ne service; to commence from the time
fficer's death, and continue for the term
years; or, if there be no widow, or in
ier death or intermarriage, the said half
ven to the orphan children of the officer
aforesaid, if he shall have left any; and
recommended to the Legislatures of the
e States to which such officers belong,
provision for paying the same, on ac-
the United States;
the restricting clause in the resolution
5, 1778, granting half pay to the officers

for seven years, expressed in th
'and not hold any office of pro
States, or any of them,' be, an
pealed."

No pension provision was made
children of soldiers not officers, w
War of the Revolution, until the a
1790. The act of July 4, 1836, a "
pay" law, became, through repea
the foundation of the present sys
to widows and children.

The First Dependent Pen

The act of March 18, 1818, wa
pendent" pension law, and provid

"That every commissioned of
[illegible]oned officer, musician, and
and all officers in the hospital c
medical staff, who served in the W
lution until the end thereof, or
nine months, or longer, at any pe
on the continental establishment;
missioned officer, non-commis
mariner, or marine, who served at
and for a like term, in the naval
United States, who is yet a res
the United States, and who is, or h
son of his reduced circumstance
be, in need of assistance from
support, and shall have substant
to a pension in the manner here
shall receive a pension from the
if an officer, of $20 per month duri

commissioned officer, musician, mariner, marine, or private soldier, of $8 per month during life: Provided, No person shall be entitled to the provisions of this act until he shall have relinquished his claim to every pension heretofore allowed him by the laws of the United States."

Service Pension for the Survivors of the Revolution.

By the act of May 15, 1828, full pay for life was allowed to officers, and, for the first time, to "every surviving non-commissioned officer, musician, or private, in said Army [of the Revolution], who enlisted therein for and during the war, and continued in service until its termination."

This act was extended by that of June 7, 1832, which provided that "each of the surviving officers, non-commissioned officers, musicians, soldiers, and Indian spies, who shall have served in the continental line, or State troops, volunteers or militia, at one or more terms, a period of two years, during the War of the Revolution, and who are not entitled to any benefit under the act for the relief of certain surviving officers and soldiers of the Revolution, passed the 15th day of May, 1828, be authorized to receive, out of any money in the Treasury not otherwise appropriated, the amount of his full pay in the said line, according to his rank

but not exceeding in
tain in the said line;
the 4th day of Marc
during his natural l
cer, non-commission
vate, as aforesaid, w
continental line, Stat
tia, a term or terms
above period, but not
be authorized to recei
money in the Treasu
each according to his
bearing such proport
to the same rank for
his term of service d
commence from the 4
This marks the li
provisions for service

Early

The act of April 30,
der the Constitution,
establishment of the
invalid pension for o
Regular Army "wound

provisions were substantially re-enacted and extended from time to time to cover additional forces and new contingencies.

The act of June 7, 1794, as amended by that of March 14, 1798, and later enactments, provided five years' half-pay pension for widows and children of commissioned officers of the Regular Army and militia, dying of "wounds received in actual service of the United States" subsequent to March 4, 1789.

No pension provision was made for widows and children of enlisted men until the act of April 10, 1812, which related only to the volunteers and militia engaged in the campaign of Gen. William Henry Harrison against the hostile Indians on the Wabash River, culminating in the victory at Tippecanoe, November 5, 1811.

Widows and children of enlisted men of the Regular Army who lost their lives in the various Indian wars after 1790 were not within the pension laws till the act of February 3, 1853, now embodied in section 4732, Revised Statutes. (See "The 1812 War.")

It is held that to confer pensionable title on a widow or child, where the soldier's service was before March 4, 1861, the death-cause of the soldier must have had its origin in some war.

The 1812 War.

As to invalid pension, the Regular Army was provided for by existing enactments and the extension of the same to include additional troops organized. The act of August 2, 1813, provided invalid pension for the militia and volunteers "disabled by known wounds received in the actual service of the United States" and line of duty. The act of April 16, 1816, included militia and volunteers disabled otherwise than by wounds, if enlisted for one year or 18 months.

Widows and children of officers of the Regular Army, and of officers and men of militia and volunteers enlisted for one year or 18 months, were entitled to five years' half-pay pension under the act of 1816, above, if the soldier's death was due to a wound received in line of duty. The children of enlisted men of the Regular Army were entitled under this act to accept five years' half-pay pension in lieu of bounty-land, if the soldier died in the service.

No pension provision was made for widows of enlisted men of the Regular Army in the war until the act of February 3, 1853, now embodied in section 4732 Revised Statutes, which is as follows:

"Sec. 4732. The widows, and children under 16 years of age, of the officers, non-commissioned officers, musicians, and privates of the Regular Army, militia, and volunteers of the War of 1812

the various Indian wars since 1790, who remained at the date of their death in the military service of the United States, or who received an honorable discharge and have died or shall hereafter die of injury received or disease contracted in the service and in the line of duty, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time he received the injury or contracted the disease which resulted in his death. But no half-pay pension shall exceed the half pay of a lieutenant-colonel, and such half-pay pension shall be varied after the 25th day of July, 1866, in accordance with the provisions of section 4712 of this Title."

The Mexican War.

The laws of May 13, 1846, and July 21, 1846, provided invalid pensions for disability incurred in the Mexican War, and are now embodied in section 4730, Revised Statutes, which is as follows:

"Sec. 4730. Any officer, non-commissioned officer, musician, or private, whether of the Regular Army or volunteer, disabled by reason of injury received or disease contracted while in the line of duty in actual service in the war with Mexico, or in going to or returning from the same, who received an honorable discharge, shall be entitled to a pension proportionate to his disability not exceeding for total disability half the pay of his rank at the date at which he received the wound or contracted the disease which resulted in such disability. But no pension shall exceed half the pay of a lieutenant colonel."

Widows and children of officers and enlisted men were made pensionable by the acts of July 21, 1848, February 22, 1849, and September 28, 1850, now embodied in section 4731, Revised Statutes, as follows:

"Sec. 4731. If any officer or other person referred to in the preceding section has died, or shall hereafter die, by reason of any injury received or disease contracted under the circumstances therein set forth, his widow shall be entitled to receive the same pension as the husband would have been entitled to had he been totally disabled; and in case of her death or remarriage, the child or children of such officer or other person referred to in the preceding section, while under the age of 16 years, shall be entitled to receive the pension. But the rate of pension prescribed by this and the preceding section shall be varied after the 25th day of July, 1866, in accordance with the provisions of section 4712 of this Title."

Section 4712, referred to, is as follows, based on the acts of July 25, 1866, and July 27, 1868:

"Sec. 4712. The provisions of this Title in respect to the rates of pension to persons whose right accrued since the 4th day of March, 1861, are extended" (but not to reduce; act of June 9, 1880) "to pensioners whose right to pension accrued under the general acts passed since the War of the Revolution and prior to the 4th day of March, 1861, to take effect from and after the 25th day of July, 1866; and the widows of Revolution-

ary soldiers and sailors receiving a less sum shall be paid at the rate of $8 per month from and after the 27th day of July, 1868."

The Navy.

As already seen, the resolutions of Congress dated August 26, 1776, and September 25, 1778, provided pensions for officers and men of the Navy on equal terms with those of the Army. Commencing with the act of July 1, 1791, a series of separate enactments provided for Naval pensions, the last general enactment of this character being an act of August 11, 1848, now embodied in section 4728, Revised Statutes, which is as follows:

"Sec. 4728. If any officer, warrant or petty officer, seaman, engineer, first, second, or third assistant engineer, fireman, or coalheaver of the Navy, or any marine, has been disabled prior to the 4th day of March, 1861, by reason of injury received or disease contracted in the service and line of duty, he shall be entitled to receive during the continuance of his disability a pension proportionate to the degree of his disability, not exceeding half the monthly pay of his rank as it existed in January, 1835. But the pension of a chief engineer shall be the same as that of a lieutenant of the Navy; the pension of a first assistant engineer the same as that of a lieutenant of marines; the pension of a second or third assistant engineer the same as that of a forward officer; the pension of a fireman or coalheaver

the same as that of a seaman; but an engineer, fireman, or coalheaver shall not be entitled to any pension by reason of a disability incurred prior to the 31st day of August, 1842."

By an act of February 13, 1813, amended by act of August 2, 1813, invalid pension was provided for the officers and men of privateers, wounded or otherwise disabled in line of duty.

Five years' half-pay pension was first provided for widows and children of officers of the Navy or marines dying of wounds incurred in line of duty, by an act of January 28, 1813. This provision was extended to the widows and children of enlisted men of the Navy and marines, and of officers and men of privateers, by an act of March 4, 1814.

Death of officers and men of the Navy and marines from causes other than wounds was first declared as conferring pensionable title, on their widows and children, by the act of March 3, 1817. This law was applicable to service from June 18, 1812, to January 22, 1824, when it was repealed.

The act of August 11, 1848, fixed the final status of widows' and children's pension title where the service of the officer, sailor, or marine was rendered before March 4, 1861, and is now embodied in section 4729, Revised Statutes, which is as follows:

"Sec. 4729. If any person referred to in the preceding section has died in the service, of injury received or disease contracted under the conditions therein stated, his widow shall be entitled to receive half the monthly pay to which the deceased was entitled at the date of his death; and in case of her death or marriage, the child or children under 16 years of age shall be entitled to the pension. But the rate of pension herein allowed shall be governed by the pay of the Navy as it existed in January, 1835; and the pension of the widow of a chief engineer shall be the same as that of a widow of a lieutenant in the Navy; the pension of the widow of a first assistant engineer shall be the same as that of the widow of a lieutenant of marines; the pension of the widow of a second or third assistant engineer the same as that of the widow of a forward officer; the pension of the widow of a fireman or coalheaver shall be the same as that of the widow of a seaman. But the rate of pension prescribed by this and the preceding section shall be varied from and after the 25th day of July, 1866, in accordance with the provisions of section 4712 of this Title; and the widow of an engineer, fireman, or coalheaver shall not be entitled to any pension by reason of the death of her husband, if his death was prior to the 31st day of August, 1842."

CHAPTER II.

GENERAL LAW INVALID PENSIONS.

At the Commencement of the Rebellion—The General Law as to Invalid Pension—Is Pension a Gratuity?—What is Pensionable—Obscure Diseases—Soundness Prior to Enlistment—Line of Duty—Enlistment—Termination of Service. Colored Soldiers, Formerly Slaves—State Militia—War Vessels. Revenue Service—Merchant Marine—Disability Incurred Since July 27, 1868—Persons on Active or Retired Lists—Nez Perces Indian War.

At the Commencement of the Rebellion.

When the war of the rebellion began there was in force the following provision of the act of April 24, 1816:

"Sec. 3. And be it further enacted, That all laws and regulations, relating to the admission of the officers and soldiers of the Regular Army to be placed on the pension roll of the United States, shall, and they are hereby declared to, relate equally to the officers and soldiers of the militia, whilst in the service of the United States."

General Order No. 15 of the War Department, dated May 4, 1861, and based on the President's proclamation of May 3, 1861, making the first call

for three-years volunteers, contained the following:

"Any volunteer who may be received into the service of the United States under this plan, and who may be wounded or otherwise disabled in the service, shall be entitled to the benefits which have been, or may be, conferred on persons disabled in the regular service; and the legal heirs of such as die or may be killed in the service, in addition to all arrears of pay and allowances, shall receive the sum of $100."

This was the first official expression on the subject of pensions for service, or disability incurred, in the late war of the rebellion, and was substantially enacted into law by act of July 22, 1861.

The General Law as to Invalid Pension.

The act of July 14, 1862, furnished the basis of sections 4692-3, Revised Statutes, which are as follows, and constitute the general law as to invalid pensions for disability incurred in service after March 4, 1861:

"Sec. 4692. Every person specified in the several classes enumerated in the following section, who has been, since the 4th day of March, 1861, or who is hereafter disabled under the conditions therein stated, shall, upon making due proof of the fact, according to such forms and regulations as are or may be provided in pursuance of law, be placed on the list of

invalid pensioners of the United States, and be entitled to receive, for a total disability, or a permanent specific disability, such pension as is hereinafter provided in such cases; and for an inferior disability, except in cases of permanent specific disability, for which the rate of pension is expressly provided, an amount proportionate to that provided for total disability; and such pension shall commence as hereinafter provided, and continue during the existence of the disability.

"Sec. 4693. The persons entitled as beneficiaries under the preceding section are as follows:

"First. Any officer of the Army, including Regulars, volunteers, and militia, or any officer in the Navy or Marine Corps, or any enlisted man, however employed, in the military or naval service of the United States, or in its Marine Corps, whether regularly mustered or not, disabled by reason of any wound or injury received, or disease contracted, while in the service of the United States and in the line of duty.

"Second. Any master serving on a gunboat, or any pilot, engineer, sailor, or other person not regularly mustered, serving upon any gunboat or war-vessel of the United States, disabled by any wound or injury received, or otherwise incapacitated, while in the line of duty, for procuring his subsistence by manual labor.

"Third. Any person not an enlisted soldier in the Army, serving for the time being as a member of the militia of any State, under orders of an officer of the United States, or who volunteered for the time being to serve with any regularly

organized military or naval force of the United States, or who otherwise volunteered and rendered service in any engagement with rebels or Indians, disabled in consequence of wounds or injury received in the line of duty in such temporary service. But no claim of a State militiaman, or non-enlisted person, on account of disability from wounds or injury received in battle with rebels or Indians, while temporarily rendering service, shall be valid unless prosecuted to a successful issue prior to the 4th day of July, 1874. (Act of July 4, 1864.)

"Fourth. Any acting assistant or contract surgeon disabled by any wound or injury received or disease contracted in the line of duty while actually performing the duties of assistant surgeon with any military force in the field, or in transitu or in hospital. (Act of March 3, 1865.)

"Fifth. Any provost-marshal, deputy provost-marshal, or enrolling-officer disabled, by reason of any wound or injury, received in the discharge of his duty, to procure a subsistence by manual labor." (Act of July 25, 1866.)

Medical cadets in the Army, authorized by act of August 3, 1861, are regarded as having been enlisted men and are within the general law. Professors in the Military Academy and civil engineers in the Navy are also within the general law; but not naval constructors, or employes in the Quartermaster's or Ordnance Departments.

Is Pension a Gratuity?

It appears from the foregoing that almost from the commencement of the war of the rebellion the Government held out the specific assurance of invalid pension to those disabled in the service, and that as a consequence the granting and acquiring of an invalid pension under the general law is not the giving or receiving of a "gratuity." The granting is the completion of what by the fulfillment of the requirements and conditions has become a contract.

What is Pensionable.

There is no particular class of wounds, injuries, or diseases, for which pensions are granted. It depends not so much upon the wound, injury, or disease itself, as upon the disabled condition arising therefrom. A soldier may have been sunstruck and now be troubled with vertigo, heart disease, or nervous debility, or contracted rheumatism, lumbago, neuralgia, camp diarrhea, or a cold which has developed into a serious throat or lung trouble; his confinement as a prisoner-of-war may have developed scurvy, with its attendant horrors; indeed, his army service may have been the direct or indirect cause of almost any known disease. He may have become ruptured (or "breached") from overstraining; or incurred varicose veins from long and rapid marches; or become partially or

entirely deaf; or he may have been wounded, or lost a finger or other member, or received other injuries, either external or internal. In short, it may be said that anything in the nature of a wound, injury, or disease, which impairs a man's usefulness as a member of society, or materially incapacitates him for the performance of manual labor, entitles him to a pension under the law. The disability arising therefrom may be slight, and yet a rating can be had.

Section 2 of the act of March 3, 1879, amending the arrears law of January 25, 1879, provides that if the "disability occurred after the discharge, then [pension shall commence] from the date of actual disability."

So if the disabling cause can be traced to the service, it is not necessary to perfecting title to pension that it be shown that the disease or other cause of disability has existed in a disabling degree ever since discharge from the service. The pension can be granted to commence from the time, after discharge, when the cause of disability first began to in some degree incapacitate the person for manual labor.

A disability which existed at some time before enlistment, but of which a cure had been had at the date of enlistment, is sometimes, according to the circumstances of the case, regarded as pensionable if it be reincurred or revived in service by accident, exposure, or other cause legitimately incidental to the service.

Obscure Diseases.

A decision rendered June 29, 1897, (9 P. D., 47,) affirms a decision rendered July 10, 1884, which declared that—

"When the evidence presented by a claimant is sufficient to satisfy the mind of a candid and impartial person that a pensionable disability from some obscure cause (such as rheumatism, neuralgia, myalgia, or angina pectoris) exists, although no physical signs of it can be discovered by the examining surgeons, pension should be allowed at a rate proportionate to the degree of disability proved."

Soundness Prior to Enlistment.

The pension appropriation act of March 3, 1885, contains the following provision, which is still in force:

"Provided, That all applicants for pension shall be presumed to have had no disability at the time of enlistment; but such presumption may be rebutted."

Line of Duty.

By joint resolution, April 12, 1866, Congress declared—

"That the true intent and meaning of the words 'or in the line of duty' used in the fourth section of the act approved March 3, 1865, entitled 'An act to amend the several acts heretofore passed to provide for the enrolling and calling out the

national forces, and for other purposes,' requires that the benefit of the provision of the said section shall be extended to any enlisted man or other person entitled by law to bounty who has been or may be discharged by reason of a wound received while actually in service under military orders, not at the time on furlough or leave of absence, nor engaged in any unlawful or unauthorized act or pursuit."

Though the above was in relation to a provision for the payment of bounty to certain soldiers discharged the service by reason of wounds received "in line of duty," it is a clear legislative expression of much value in the determination of pensionable line of duty.

It seems now to be settled that a soldier or sailor is in line of duty whenever present at his proper place, ready for such duty as may be required of him, engaged in no act in violation of regulations or the orders of his superior officers, and guilty of no fault or negligence. Thus, soldiers injured while engaged in athletic sports and bathing, are regarded as in line of duty.

A soldier, captured while absent on a furlough given for personal reasons, or while absent without permission outside the lines (but having no intention to desert), and who contracted disability while held a prisoner-of-war, is regarded as having contracted the same in line of duty. Under some circumstances a soldier incurring disability while absent with permission, and without fau

or improper conduct on his part, is regarded as in line of duty.

Section 4700, Revised Statutes, based on the acts of July 6, 1866, and March 3, 1873, is as follows:

"Sec. 4700. Officers absent on sick-leave, and enlisted men absent on sick-furlough or on veteran furlough with the organization to which they belong, shall be regarded in the administration of the pension laws in the same manner as if they were in the field or hospital."

The present construction of the above law, as to veteran furlough, is such as to defeat its obvious intent. As the veteran furlough did not actually begin until the men dispersed to their several homes, it manifestly renders the law of no effect to hold that while they were thus dispersed they are not to be regarded as in line of duty.

Enlistment.

There must be an official record in the War Department of the enlistment, in order to render the clause "whether regularly mustered or not" (first subdivision, section 4693, R. S.) of any avail. In only exceptional instances, if any, are there any records of enlistments before March 3, 1863, when the recruit was never actually mustered into the United States service. Under the act of March 3, 1863, the Federal Government assumed

entire charge of the recruiting machinery formerly controlled by State authorities; U. S. provost marshals, enrolling officers, etc., being appointed in each Congressional district.

Termination of Service.

"The period of service of all persons entitled to the benefits of the pension laws, or on account of whose death any person may become entitled to a pension, shall be construed to extend to the time of disbanding the organization to which such persons belonged, or until their actual discharge for other cause than the expiration of the service of such organization." (Section 4701, Revised Statutes; act of June 6, 1866, and March 3, 1873.)

Colored Soldiers, Formerly Slaves.

"All colored persons who enlisted in the Army during the war of the rebellion, and who are now prohibited from receiving bounty and pension on account of being borne on the rolls of their regiments as 'slaves,' shall be placed on the same footing, as to bounty and pension, as though they had not been slaves at the date of their enlistment." (Section 4723, R. S.; act of March 3, 1873.)

State Militia.

In addition to the legislation now embodied in the first and third subdivisions of section 4693, Revised Statutes, already quoted (page 2[illegible] the

Missouri Home Guards, organized in the spring of 1861 for the defense of the State, and that were called out and actually served in the field under proper authority and in a regular military capacity, are especially provided for by the act of March 25, 1862. This act declares that all officers and enlisted men who, previous to its date, were "actually employed in the military service of the United States, whether mustered into actual service or not, when their services were accepted and actually employed" by the Generals commanding the military department of which Missouri was a part, should be entitled to pension for disability incurred in the line of duty while in such service. The Home Guards entitled to be so recognized were ascertained through the Hawkins Taylor Commission, so-called, appointed in March, 1863, by authority of the joint resolution of Congress dated July 12, 1862, and which rendered a report in September, 1863.

The "Missouri State Militia," organized for three years' service in the winter of 1861-2 under the authority of General Order No. 96 of the War Department, dated November 7, 1861, and the provisional regiments organized early in 1863 from the Enrolled Missouri Militia, are specially provided for by section 4722, Revised Statutes, embodying the act of March 3, 1873, as follows:

"Sec. 4722. The provisions of this Title [the general pension law: see section 4692 R. S., page

28] are extended to the officers and privates of the Missouri State Militia, and the provisional Missouri Militia, disabled by reason of injury received or disease contracted in the line of duty while such militia was co-operating with United States forces, and the widow or children of any such person, dying of injury received or disease contracted under the circumstances herein set forth, shall be entitled to the benefits of this Title. But the pensions on account of such militia shall not commence prior to the 3d day of March, 1873."

The Missouri Militia organized in the summe and fall of 1861 for six months' service, the E rolled Missouri Militia organized in the summ of 1862, the provisional companies of Enroll Missouri Militia organized in the summer of 18 and the Missouri Militia organized early in 18 were purely State troops and pensionable o under the third subdivision of section 4693, vised Statutes.

All State militia called into service by President, notably the Pennsylvania Emerge Militia of 1863, is pensionable under the first division of section 4693, Revised Statutes, w as will be seen, includes "militia * * i military * * service of the United States."

It is not sufficient that State militia co-ope with United States troops and was unde command of United States officers; it mus been called into the United States servic

pecial purpose, to be pensionable under the irst subdivision of section 4693, R S.

War Vessels.

"War Vessels," within the meaning of the second subdivision of section 4693, Revised Statutes, are vessels owned, or leased, and manned by the Government, and, in general, armed for offensive and defensive purposes. Transports, supply-ships, tugs, and the like, are not as a rule included; nor are chartered vessels manned by the owners, though commanded by a United States officer. A tug acting as dispatch boat attached to the flagship of a squadron has been held a "war vessel."

Revenue Service.

During the war of the rebellion, as well as the Mexican and 1812 wars, revenue cutters of the Treasury Department were under the control and pay of the Navy Department in co-operation with and practically a part of the naval forces, in accordance with the act of March 2, 1799, (section 2757, Revised Statutes,) which is as follows:

"Sec. 2757. The revenue cutters shall, whenever the President so directs, co-operate with the Navy, during which time they shall be under direction of the Secretary of the Navy, and the expense thereof shall be defrayed by the Navy Department."

Such service was made pensionable by act of April 18, 1814, (Section 4741, Revised Statutes,) as follows:

"Sec. 4741. The officers and seamen of the revenue cutters of the United States, who have been or may be wounded or disabled in the discharge of their duty while co-operating with the Navy by order of the President, shall be entitled to be placed on the Navy pension list, at the same rate of pension and under the same regulations and restrictions as are provided by law for the officers and seamen of the Navy."

Merchant Marine.

The act of May 28, 1896, provides that it-

"Any Master, mate, pilot, or engineer of steam vessels licensed under Title 52 of the Revised Statutes, is wounded or killed while performing duties under the United States required by his license, he or his heirs or legal representatives shall be entitled to all the privileges accorded to soldiers and sailors serving in the Army and Navy, under the pension laws."

Disability Incurred Since July 27, 1868.

Section 4694, Revised Statutes, (act of July 2 1868,) is as follows:

"Sec. 4694. No person shall be entitled t pension by reason of wounds or injury recei or disease contracted in the service of the Un States subsequent to the 27th day of July, 1 unless the person who was wounded or inj

or contracted the disease, was in the line of duty; and, if in the military service, was at the time actually in the field, or on the march, or at some post, fort, or garrison, or en route, by direction of competent authority, to some post, fort, or garrison; or, if in the naval service, was at the time borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States, or to some other vessel or naval station, or hospital."

It will thus be seen that the provisions of section 4700, Revised Statutes, relative to sick furlough (and veteran furlough), have no application to claims in which the alleged disability was incurred in service since July 27, 1868.

The War Department regarding the city of Washington as a "post," general service men who were on clerical duty in the War Department are now held to be on the same footing with other enlisted men as regards pensions.

Persons on Active or Retired Lists.

Section 4724, Revised Statutes, (act of April 30, 1844,) is as follows:

"Sec. 4724. No person in the Army, Navy, or Marine Corps shall draw both a pension as an invalid and the pay of his rank or station in the service, unless the disability for which the pension was granted be such as to occasion his employment in a lower grade, or in the civil branch of the service."

The act of August 29, 1890, amends the a as follows:

"Sec. 2. Hereafter no officer of the Army, N or Marine Corps on the retired list shall dra receive any pension under any law."

A further amendment is made by the a March 3, 1891, as follows:

"And provided further, That hereafter pension shall be allowed or paid to any off non-commissioned officer, or private in the A Navy, or Marine Corps of the United St either on the active or retired list."

Nez Perces Indian War.

The act of March 3, 1881, extends the pr ions of the general law to the volunteers joined the United States forces in Montana ing the Nez Perces Indian War in 1877, and wounded or otherwise disabled in such serv and to the heirs of such as were killed.

CHAPTER III.

RATES OF GENERAL LAW INVALID PENSION.

Total Disability Rates—Junior Engineer Officers in the Navy Fixing Rate According to Rank—The Divisible $18—Rate and Disabilities Specified by Law—Grade Ratings—Manual Labor Defined—Rates Fixed by the Commissioner of Pensions Minimum Rate—Reduction of Deafness Rates.

Total Disability Rates

The act of April 24, 1816, marks the commencement of the abolition of half-pay rates of pension. It was therein provided that—

"All persons of the rank hereinafter named, who are now on the military pension roll of the United States, shall, from and after the passage of this act, be entitled to, and receive, for disabilities of the highest degree, the following sums in lieu of those to which they are now entitled, to wit: a first lieutenant, $17; a second lieutenant, $15; a third lieutenant, $14; an ensign, $13; and a non-commissioned officer, musician, or private, $8 per month; and for disabilities of a degree less than the highest, a sum proportionably less."

The rates for "total" disability in accordance with rank, as well as the other rates enumerated, relate only to disability of proven service origin, and not to disability under the act of June 27, 1890 (which see, page 91). As specified by the act of July 14, 1862, and various amendments, all

substantially embodied in section 4695, Revised Statutes, they are as follows:

	Per Mo.
Lieutenant-Colonel and all officers of higher rank in the Marine Corps, Captain and all officers of higher rank, Commander, Surgeon, Paymaster, and Chief Engineer, respectively ranking with Commander by law, Lieutenant-Commander, Lieutenant commanding, and Master commanding in the naval service	$30.00
Major in the Marine Corps, Lieutenant, Surgeon, Paymaster, and Chief Engineer, respectively ranking with Lieunant by law, and Passed Assistant Surgeon in the naval service	25.00
Captain in the military service and in the Marine Corps, Chaplain in the Army, and Provost-Marshal, Professor of Mathematics, Master, or Lieutenant of the junior grade, Assistant Surgeon, Assistant Paymaster, and Chaplain in the naval service	20.00
First Lieutenant in the military service and in the Marine Corps, Acting Assistant or Contract Surgeon, and Deputy Provost-Marshal	17.00
Second Lieutenant in the military service and in the Marine Corps, First Assistant Engineer, Ensign, and pilot in the naval service, and Enrolling officer	15.00
Cadet Midshipman, Passed Midshipman, Midshipman, or Ensigns of the junior grade, clerks of Admirals and Paymasters, and of other officers commanding vessels, Second and Third Assistant Engineers, Master's Mate, and all warrant officers in the naval service	10.00
For all other persons whose rank or office is not mentioned above	8.00

Junior Engineer Officers in the Navy.

An act of March 3, 1877, provides that from and after that date the pension for "total disability of passed assistant engineers, assistant engineers and cadet engineers in the naval service, respectively, shall be the same as the pensions allowed to officers of the line in the naval service with whom they have relative rank."

Fixing Rate According to Rank.

Section 4696, Revised Statutes, (act of July 14, 1862, and amendments,) is as follows:

"Sec. 4696. Every commissioned officer of the

Army, Navy, or Marine Corps shall receive such and only such pension as is provided in the preceding section for the rank he held at the time he received the injury or contracted the disease which resulted in the disability on account of which he may be entitled to a pension; and any commission or presidential appointment, regularly issued to such person, shall be taken to determine his rank from and after the date, as given in the body of the commission or appointment conferring said rank: Provided, That a vacancy existed in the rank thereby conferred; that the person commissioned was not disabled for military duty; and that he did not willfully neglect or refuse to be mustered."

Under various enactments since 1866, officers may under some circumstances be mustered or re-mustered under their commissions, thus entitling them to a higher rate of pension in many instances. (See "Correction of Muster.")

The Divisible $18.

With the act of July 4, 1864, which inaugurated the system of special rates for certain specific disabilities, the "total" disability ratings above enumerated began to lose their original character as ratings for total disability for the performance of manual labor. The act of July 6, 1866, especially provided a rating of $20 for those "so disabled as to be incapacitated for performing any manual labor," and "total disability" became only the name of certain ratings above enumerated.

The act of March 3, 1873, now embodied in sec-

tion 4699, Revised Statutes, established the divisible $18 which is now the basis of all ratings not especially fixed by law or official ruling:

"Sec. 4699. The rate of $18 per month may be proportionately divided for any degree of disability established for which section 4695 makes no provision."

Rates and Disabilities Specified by Law.

Ratings.	From July 4, 1864.	From Mar. 3, 1865.	From June 6, 1866.	From June 4, 1872.	From June 4, 1874.	From Feb. 28, 1877.	From June 17, 1878.	From Mar. 3, 1879.	From Mar. 3, 1883.	From Mar. 3, 1885.	From Aug. 4, 1886.	From Aug. 27, 1888.	From Feb. 12, 1889.
Loss of both hands..	$25	...	...	$31 25	$50	...	$72	.....	...	.....	...	...	$100
Loss of both feet....	20	...	...	31 25	50	..	72	.....	...	.....	...	...	....
Loss of both eyes....	25	...	...	31 25	50	...	72	.....	...	.....	...	...	....
Loss of an eye, the other lost before enlistment.....	...	...	$25	31 25	50	...	72	.....	...	.....	...	...	....
Loss of one hand and one foot.....	...	$20	...	24 00	...	$36	...	.....	...	.....	...	...	....
Total disability in one hand and one foot.....	...	...	20	24 00	...	36	...	.....	...	.....	...	...	....
Loss of a hand or a foot.....	...	...	15	18 00	...	...	...	.....	$24	.....	$30	...	....
Total disability of a hand or a foot....	...	...	15	18 00	...	...	...	.....	24	.....	30	...	....
Amputation at or above elbow or knee.....	...	...	15	18 00	24	...	...	.....	30	.....	36	...	....
Total disability of an arm or a leg....	...	...	15	18 00	...	...	...	.....	24	.....	36	...	....
Total disability in both hands.....	...	...	25	31 25	50	...	72	.....	...	.....	...	...	....
Total deafness.....	...	...	...	13 00	...	...	...	.....	...	.....	...	$30	....
Amputation at shoulder joint	...	...	15	18 00	24	...	...	.....	...	$37 50	*45	...	....
Amputation at hip joint.....	...	...	15	18 00	24	...	...	37 50	...	.....	*45	...	....

*The language of the act of Aug. 4, 1886, is, "an arm at the shoulder-joint or a leg at the hip-joint, or so near the joint as to prevent the use of an artificial limb." If the amputation be above the middle point between elbow and shoulder or knee and hip, it is regarded as too "near the joint" within the meaning of the law.

Grade Ratings.

The several grade ratings are for the specified degrees of disability only if permanent, and not if merely temporary. There are no intermediate rates for lesser degrees of disability, and ratings for minor disabilities cannot be added together to make a grade rating.

First Grade.—For disability requiring "the regular and personal aid and attendance of another person," the act of June 16, 1880, fixes the rate of invalid pension at $72 per month, to date from June 17, 1878. A condition practically requiring constant attendance must be shown. This degree of disability was first especially recognized by the act of June 6, 1866, providing a rate of $25, which was increased to $31.25 from June 4, 1872, and to $50 from June 4, 1874.

As the act of June 16, 1880, provided the increased rate of $72 only where pension was then being paid at $50 per month for the specified degree of disability (under act of June 18, 1874,) or became payable for a period commencing not later than June 16, 1880, the following was enacted, dated March 4, 1890.

"All soldiers, sailors, and marines who have since the 16th day of June, 1880, or who may hereafter become so totally and permanently helpless from injuries received or disease contracted in the service and line of duty as to require the regular personal aid and attendance of

another person, or who, if otherwise entitled, were excluded from the provisions of "An act to increase pensions of certain pensioned soldiers and sailors who are utterly helpless from injuries received or disease contracted while in the United States service, approved June 16, 1880, shall be entitled to receive a pension at the rate of $72 per month from the date of the passage of this act or of the certificate of the examining surgeon or board of surgeons showing such degree of disability made subsequent to the passage of this act."

Intermediate Grade.—For disability requiring "frequent and periodical, though not regular and constant, personal aid and attendance of another person," the act of July 14, 1892, fixes the rate at $50 "from and after the date of the certificate of the examining surgeon or board of examining surgeons showing such degree of disability, and made subsequent to the passage of this act." It is held that a person who requires the aid of another person in retiring and rising from bed, in dressing and undressing, and in attending to the usual calls of nature, requires such "frequent and periodical personal aid and attendance" as is contemplated by the law.

Second Grade.—For those "so disabled as to be incapacitated for performing any manual labor," the act of March 3, 1883, provides a rating of $30. An extraordinary rate was first created for this degree of disability by the act of June 6, 1866,

when $20 per month was provided. This was increased to $24 from and after June 4, 1872. It is held that total disability to perform any manual labor is intended to mean not merely inability to perform the ordinary manual labor performed by day laborers, wherein muscular power, if not other elements of physical endurance is required, but inability to perform any manual labor wherein the element of usefulness or profit or of capacity for earning subsistence is involved.

Third Grade.—For those "so disabled as to render their incapacity to perform manual labor equivalent to loss of a hand or foot," the act of March 3, 1883, provides a rating of $24. Until the act of August 4, 1886, total disability of hand or foot and disability equivalent to loss of hand or foot were given the same rating; but the act of 1886, above, provided a rate of $30 for total disability of hand or foot, leaving unchanged the rate for disability equivalent to loss.

Manual Labor Defined.

A decision rendered April 6, 1895, holds:

"'Manual labor' in the pension law does not mean labor with the hands merely, but labor performed with bodily exertion or muscular effort." (8 P. D., 498.)

Rates Fixed by the Commissioner of Pensions.

Disabilities.	Old Rates.	From March 3, 1873.	From April 3, 1884.	From October 7, 1885.	From November 15, 1887.	From August 27, 1888.	From December 4, 1891.
Anchylosis of ankle.	¼	.....	Total	.....	.....	....	....
Anchylosis of wrist..	¼	.....	Total	.....	.....	....	....
Anchylosis of elbow joint.....	Total	.....	10-18	.....	.....	....	....
Anchylosis of knee joint.....	Total	.....	10-18	.....	.....	....	....
Anchylosis of shoulder joint.....	Total	12-18	.....	.....	.....	....	....
Loss of palm of hand and all the fingers, the thumb remaining.....	Total	16-18	17-18	.....	.....	....	....
Loss of thumb, index, middle, and ring fingers.....	Total	16-18	17-18	.....	.....	....	....
Loss of all the fingers, thumb and palm remaining....	Total	16-18	.....	.....	.....	....	....
Loss of thumb, index and middle fingers.	Total	14-18	.....	.....	16-18	....	....
Loss of thumb, index, and little fingers.....	Total	14-18	.....	.....	16-18	....	....
Loss of thumb and index finger.....	Total	12-18	.....	.....	.....	....	....
Loss of thumb and little finger.....	Total	.....	.....	10-18	.....	....	....
Loss of index, middle, and ring fingers.....	Total	12-18	.....	.....	16-18	....	....
Loss of index and middle fingers.....	Total	.....	.....	.....	.....	....	....
Loss of index and little fingers.....	¼	.....	.....	.....	.....	....	....
Loss of middle, ring, and little fingers...	Total	12-18	.....	.....	14-18	....	....
Loss of middle and ring fingers.....	¼	.....	.....	.....	.....	....	....
Loss of middle and little fingers.....	Total	.....	.....	.....	.....	....	....
Loss of ring and little fingers.....	¼	.....	.....	.....	.....	....	....

RATES FIXED BY THE COMMISSIONER OF PENSIONS—*continued.*

Disabilities.	Old Rates.	From March 3, 1873.	From April 3, 1884.	From October 7, 1885.	From November 15, 1887.	From August 27, 1888.	From December 4, 1891.
Loss of thumb	½	.....	Total	.....	.....	....	....
Loss of index finger	⅜	.....	½	.....	.....	....	....
Loss of any other finger without complications	¼	.....	.....	.....	.....	....	....
Loss of thumb and metacarpal bone	.....	.....	.....	.....	12-18	.....	.....
Loss of all the toes of one foot	Total	10-18	.....	.....	.....	....	....
Loss of great, second, and third toes	Total	.....	.....	.....	.....	....	....
Loss of great toe and metatarsal	Total	.....	.....	.....	.....	....	....
Loss of great and second toes	¾	.....	.....	.....	Total	.....	.....
Loss of great toe	⅓	.....	.....	.....	¾	....	....
Loss of any other toe and metatarsal	⅓	.....	.....	.....	¾	.....	....
Loss of any other toe	¼	.....	.....	.....	.....	....	....
Chopart's amputation of foot, with good results	Total	14-16	.....	.....	.....	....	....
Perigoff's modification of Syme's (no equivalent)	Total	16-18	17-18	.....	.....	....	....
Loss of an eye	.....	.....	.....	.....	17-18	....	....
Loss of one eye with deformity	.....	.....	17-18	.....	.....	....	....
Loss of sight of one eye	½	.....	Total	.....	.....	....	....
Double inguinal hernia	¾	.....	12-18	.....	.....	....	....
Double inguinal hernia, each of which passes through the external ring	.....	.....	.....	.....	.....	....	$17
Double inguinal hernia, one of which passes through the external ring and the other does not	.....	.....	.....	.....	.....	....	12

RATES FIXED BY THE COMMISSIONER OF PENSIONS—*continued.*

Disabilities.	Old Rates.	From March 3, 1873.	From April 3, 1884.	From October 7, 1885.	From November 15, 1887.	From August 27, 1888.	From December 4, 1891.
Double inguinal hernia, neither of which passes through the external ring	.....	.....	.....	.....	.....	....	8
Inguinal scrotal, or ventral hernia	½	.....	Total	.....	.....	....	....
Inguinal hernia which passes through the external ring	.....	.....	.....	.....	.....	....	10
Inguinal hernia which does not pass through the external ring	.....	.....	.....	.....	.....	....	6
Femoral hernia	.....	.....	.....	.....	.....	....	10
Small varicocele	¼	.....	.....	.....	.....	....	....
Well-marked varicocele	½	.....	.....	.....	.....	....	....
Slight deafness of one ear	⅛	.....	.....	.....	.....	....	2
Severe deafness of one ear	⅛	.....	.....	.....	.....	2	4
Nearly total deafness of one ear	⅛	.....	¼	.....	½	6	....
Impaired hearing of both ears equivalent to slight deafness of one ear	⅛	.....	.....	.....	.....	....	2
Impaired hearing of both ears, equivalent to severe deafness of one ear	⅛	.....	.....	.....	.....	2	4
Total deafness of one ear—							
Lieutenant Colonel or higher rank	$3.75	.....	$7.50	.....	$11.25	$10	....
Major	3.12½	.....	6.25	.....	9.37½	10	....
Captain	2.50	.....	5.00	.....	7.50	10	....
First Lieutenant	2.12½	.....	4.25	.....	6.00	10	....
Second Lieutenant	1.87½	.....	3.75	.....	5.00	10	....
Private or non-commissioned officer	1.00	.....	2.00	.....	4.00	10	....

RATES FIXED BY THE COMMISSIONER OF PENSIONS—*continued.*

Disabilities.	Old Rates.	From March 3, 1873.	From April 3, 1884.	From October 7, 1885.	From November 15, 1887.	From August 27, 1888.	From December 4, 1891.
Slight deafness of both ears—							
Lieutenant Colonel or higher rank....	7.50	.....	.....	.....	15.00	6	....
Major.....	6.25	.....	.....	.....	12.50	6	....
Captain.....	5.00	.....	.....	.....	10.00	6	....
First Lieutenant...	4.25	.....	.....	.....	9.00	6	....
Second Lieutenant.	3.75	.....	.....	.....	8.00	6	....
Private or non-commissioned officer.....	2.00	.....	4.00	.....	6.00	6	....
Severe deafness of both ears—							
Lieutenant Colonel or higher rank....	15.00	.....	22.50	.....	26.25	22	....
Major.....	12.50	.....	18.75	.....	21.87½	22	....
Captain.....	10.00	.....	15.00	.....	17.50	22	....
First Lieutenant...	8.50	.....	12.75	.....	16.00	22	....
Second Lieutenant.	7.50	.....	11.25	.....	14.00	22	....
Private or non-commissioned officer.	4.00	.....	8.00	12.00	.....	22	....
Total deafness of one ear and slight of other—							
Lieutenant Colonel or higher rank....	7.50	.....	15.00	.....	22.50	20	....
Major.....	6.25	.....	12.50	.....	18.75	20	....
Captain.....	5.00	.....	10.00	.....	15.00	20	....
First Lieutenant...	4.25	.....	8.50	.....	13.00	20	....
Second Lieutenant.	3.75	.....	7.50	.....	10.00	20	....
Private or non-commissioned officer.	2.00	.....	6.00	.....	8.00	20	....
Nearly total deafness of one ear and slight of other—							
Lieutenant Colonel or higher rank....	7.50	.....	15.00	.....	22.50	15	....
Major.....	6.25	.....	12.50	.....	18.75	15	....
Captain.....	5.00	.....	10.00	.....	15.00	15	....
First Lieutenant...	4.25	.....	8.50	.....	13.00	15	....

RATES FIXED BY THE COMMISSIONER OF PENSIONS—*continued.*

Disabilities.	Old Rates.	From March 3, 1873.	From April 3, 1884.	From October 7, 1885.	From November 15, 1887.	From August 27, 1888.	From December 4, 1891.
Second Lieutenant.	3.75	.....	7.50	.....	10.00	15	....
Private or non-commissioned officer.	2.00	.....	6.00	.....	8.00	15	....
Severe deafness of one ear and slight of other—							
Lieutenant Colonel or higher rank....	7.50	.....	15.00	.....	22.50	10	....
Major.....	6.25	.....	12.50	.....	18.75	10	....
Captain.....	5.00	.....	10.00	.....	15.00	10	....
First Lieutenant...	4.25	.....	8.50	.....	13.00	10	....
Second Lieutenant.	3.75	.....	7.50	.....	10.00	10	....
Private or non-commissioned officer.	2.00	.....	6.00	.....	8.00	10	....
Total deafness of one ear and severe of other—							
Lieutenant Colonel or higher rank....	15.00	.....	22.50	.....	26.25	25	....
Major.....	12.50	.....	18.75	.....	21.87½	25	....
Captain.....	10.00	.....	15.00	.....	17.50	25	....
First Lieutenant...	8.50	.....	12.75	.....	16.00	25	....
Second Lieutenant.	7.50	.....	11.25	.....	14.00	25	....
Private or non-commissioned officer.	4.00	.....	9.00	12.00	.....	25	....
Deafness of both ears nearly total—							
Lieutenant Colonel or higher rank....	22.50	.....	.....	.....	26.25	27	....
Major.....	18.75	.....	.....	.....	21.87½	27	....
Captain.....	15.00	.....	.....	.....	17.50	27	....
First Lieutenant...	12.75	.....	.....	.....	16.00	27	....
Second Lieutenant.	11.25	.....	.....	.....	14.00	27	....
Private or non-commissioned officer.	6.00	.....	10.00	12.00	.....	27	....

Note.—In the case of more than one disability the combined rating cannot exceed $17, excepting in the case of officers, the total of whose rank exceeds this amount, or in the case where the specific rating for one of the disabilities itself is in excess of $17. In no other case can any rating exceed $17, unless it is shown that the disability or disabilities from pensioned causes are equivalent to the loss of a hand or foot, the next higher rate, which is $24 ("Third grade").

Minimum Rate.

Previous to act of March 2, 1895, many thousands of invalid pensioners were in receipt of pension of from $1 to $5 per month. The act of the above date fixed a minimum of $6, as follows:

"And it is further provided, That from and after the passage of this act, all pensioners now on the rolls, who are pensioned at less than $6 per month, for any degree of pensionable disability, shall have their pensions increased to $6 per month; and that hereafter, whenever any applicant for pension would, under existing rates, be entitled to less than $6 for any single disability, or several combined disabilities, such pensioner shall be rated at not less than $6 per month: Provided also, That the provisions hereof shall not be held to cover any pensionable period prior to the passage of this act, nor authorize a re-rating of any claims for any part of such period, nor prevent the allowance of lower rates than $6 per month, according to the existing practice in the Pension Office in pending cases covering any pensionable period prior to the passage of this act."

Reduction of Deafness Rates.

Under the act of August 27, 1888, fixing the rate for total deafness at $30, "and such proportion thereof in cases of partial deafness as the Secretary of the Interior may deem equitable," the rate for slight deafness of both ears was fixed at $15; nearly total deafness of one ear and slight of

the other, at $20; and severe deafness of one ear and slight of the other, at $20. Ruling No. 245 of the Commissioner of Pensions, dated December 4, 1891, reduced these rates to $6, $15, and $10, respectively, and by Ruling No. 249, dated November 1, 1892, these reductions were made to relate back to August 27, 1888, it being further provided that "where the claimant has received ratings for a period in excess of those provided for in the present amended schedule, the amount thus received in excess shall be deducted from any benefit he may receive from an allowance from date of filing claim or from discharge."

CHAPTER IV.

GENERAL LAW PENSION OF WIDOWS AND CHILDREN.

First Provision for Widows of Late War—The General Law. Death-cause—Marriage—Prior Marriage—Pensionable Minority of Children—Legitimacy of Children—Forfeiture by Widow. Remarriage of Widow—Permanently Helpless Children—Rates. Additional Rate on Account of Children—Increase of Rates. Survivorship—Birth of Children—Centralia Massacre.

First Provision for Widows of Late War.

In the act of July 22, 1861, "to authorize the employment of volunteers to aid in enforcing the laws and protecting public property," occurs the following:

"Sec. 6. And be it further enacted, That any volunteer who may be received into the service of the United States under this act, and who may be wounded or otherwise disabled in the service, shall be entitled to the benefits which have been or may be conferred on persons disabled in the regular service; and the widow if there be one, and if not, the legal heirs of such as die, or may be killed in service, in addition to all arrears of pay and allowances, shall receive the sum of $100."

The General Law.

No pension provision was made for widows or children of the late war until the act of July 14,

1862, now embodied in section 4702, Revised Statutes, which as amended by the act of August 7, 1882, is as follows:

"Sec. 4702. If any person embraced within the provisions of sections 4692 and 4693 has died since the 4th day of March, 1861, or hereafter dies, by reason of any wound, injury, or disease which under the conditions and limitations of such sections would have entitled him to an invalid pension had he been disabled, his widow, or if there be no widow, or in the case of her death without payment to her of any part of the pension hereinafter mentioned, his child, or children, under 16 years of age, shall be entitled to receive the same pension as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood, and to his child or children until they severally attain the age of 16 years, and no longer; and if the widow remarry, the child or children shall be entitled from the date of remarriage, except when such widow has continued to draw the pension money after her remarriage, in contravention of law, and such child or children have resided with and been supported by her, their pension will commence at the date to which the widow was last paid."

Note that unless the husband and father incurred, in the service and line of duty, "wound, injury, or disease," which was the cause of his death, directly or indirectly, there is no title to pension under the general law for the widows or

children. But it is not required that he must have been a pensioner or claiming pension at the date of his death.

Death-cause.

In general the death-cause must be directly due or attributable to disability incurred in the service. A great liberality in this regard manifested in some instances a few years ago, has not been sustained in more recent years, but the tendency appears to be in the direction of a return to a greater regard for the reasonable probabilities of a case.

If the death occurred in the service, the difficulty of showing death due to service and line of duty is reduced to the minimum, all the material facts being usually fully shown by official records. In a decision rendered March 9, 1896, it was held that—

"Where it is shown that a soldier was sound at enlistment and died in regimental hospital of disease, the exact character and nature of which disease is not shown, the testimony relative thereto being conflicting, it will be presumed, in the absence of evidence to the contrary, that he died of disease contracted in the service and line of duty." (8 P. D., 98.)

When death occurred after a lapse of some years from discharge, the connection of death-cause with the service is often difficult to show. A decision rendered September 5, 1896, says:

"Soldier, during his fatal illness, suffered from disease of heart, result of rheumatism, for which he was pensioned, and also from disease of lungs, which is not conclusively shown to be due to the service, though the evidence strongly tends to establish the same. Both disease of lungs and disease of heart were factors in causing death, but it cannot be determined with any degree of certainty which of the two diseases was the predominant cause, or contributed most toward producing death; and it is held that, from the evidence, it is more reasonable to assume that death was due to soldier's military service than to assume that it was not, and the doubts in the case will be resolved in favor of claimant." (8 P. D., 276.)

A decision rendered March 9, 1897, (8 P. D., 474,) sustains a decision of August 26, 1878, which held that—

"Where soldier died of pneumonia ingrafted on a previously existing incurable disease of lungs, caused by his army service, his death is accepted as due to the service." (5 P. D., o. s., 45.)

A decision rendered April 14, 1897, says:

"Soldier was pensioned for disease of the kidneys, result of injury of the back. The disease of kidneys is shown to have existed all the time in more or less severe form from discharge to death. He also suffered for a few years before death from rheumatism of the left shoulder, never very serious. He died of dilatation of the heart. It is held that the disease of kidneys was the predominating disability, and the more likely

cause of the fatal disease, in view of all the evidence, and that whatever doubt may exist on the subject should be resolved in favor of the claimant." (8 P. D., 511.)

A decision rendered August 21, 1897, (9 P. D., 113,) confirms a decision rendered January 11, 1890, which held that—

"Where the evidence, lay and medical, goes to show that the cause for which pension was granted to a soldier was complicated with a disease which was the immediate cause of the soldier's death, the Department will sustain the widow's claim for pension on account of the soldier's death from said complication of causes, holding the same, for pensionable purposes, to be due to the line of duty in the service." (3 P. D., 313.)

In the earlier case the disabilities of service origin became complicated, in last illness, with cerebro meningitis, not pathologically related to the other disabilities, but which became the immediate cause of death. The decision says that the preponderance of evidence "goes to establish the fact that the soldier's death was the legitimate end of a long period of shattered health, the beginning of which is directly traceable to the service, which he entered, after a thorough examination, as a stout and healthy man." In the later case heart disease, due to rheumatism of service origin, was complicated, in last illness, with suppurative disease of lungs, which caused death. The decision says:

"It is not medically established that there was a pathological connection between the lung lesion and heart affection, [and] although it may be admitted that both were factors in the death cause, yet the former, disease of lungs, was the most prominent"; but as "it is a well-established theory that the existence of disease of heart seriously complicates any lung lesion," the case was ordered allowed.

Marriage.

It is not material when the widow and the deceased soldier or sailor were married, whether before, during or subsequent to his service, to establish title to widow's pension under the general law.

As to the legality of marriage, the act of August 7, 1882, provides as follows:

"Sec. 2. That marriages, except such as are mentioned in section 4705 of the Revised Statutes [relative to marriage of colored persons and Indians] shall be proven in pension cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to pension accrued. * * *"

Thus, if a common-law marriage was recognizable under "the law of the place where the parties resided at the time of marriage," or where the husband died, and there being no legal obstacle to their marriage, no other evidence of marriage is necessary than to show that they lived to-

gether as husband and wife, holding out and recognizing each other, and being recognized, as such.

The question of marriage in cases of colored persons or Indians is specially considered in section 4705, Revised Statutes, embodying acts of July 4, 1864, June 6 and 15, 1866, and March 3, 1873, and which is as follows:

"Sec. 4705. The widows of colored and Indian soldiers and sailors who have died, or shall hereafter die, by reason of wounds or injuries received or casualty received, or disease contracted in the military or naval service of the United States, and in the line of duty, shall be entitled to receive the pension provided by law without other evidence of marriage than satisfactory proof that the parties were joined in marriage by some ceremony deemed by them obligatory, or habitually recognized each other as man and wife, and were so recognized by their neighbors, and lived together as such up to the date of enlistment, when such soldier or sailor died in the service, or, if otherwise, to date of death; and the children born of any marriage so proved shall be deemed and held to be lawful children of such soldier or sailor: but this section shall not be applicable to any claims on account of persons who enlist after the 3d day of March, 1873."

Prior Marriage.

The death or divorce of any former spouse of either party must be shown, to render legal the marriage of the claimant. The long continued

absence of a former spouse sometimes raises a presumption of death, and renders legal a marriage which would not otherwise be legal, there being no positive evidence of death of the former spouse and there having been no legal separation. Sometimes, according to the circumstances of the case, a divorce will be presumed, the place where it was obtained being unknown.

In a decision rendered October 30, 1894, (7 P. D. 363,) it was held that—

"Where one of the parties to a marriage is ignorant of the fact that the other party had at the time of such marriage a legal husband or wife living from whom he or she had not been divorced, and dies in ignorance of such fact, it becomes a legal impossibility for the surviving party to such second marriage who alone had knowledge of the legal impediment to prove a legal marriage, as in such cases no consent can be proved after the removal of the legal impediment."

In the case in which the above decision occurred, the soldier died in ignorance of the fact that at the time of his marriage to the claimant she had a husband living from whom she was not legally separated, and who died before the soldier, but of which the soldier had no knowledge.

The principle of the decision is that a person may not take advantage of his or her own wrong, and if a claimant as widow concealed from the

soldier a legal obstacle to their marriage and he did not learn that it ceased to exist, no consent to a common law marriage could be shown after the removal of the obstacle.

A decision rendered August 30, 1897, (not reported,) modifies the former decision to the extent of holding a common law marriage to have been established after the removal of a legal obstacle in the form of an undivorced wife of the soldier, who, however, obtained a divorce from the soldier before his death, but of which facts the claimant was not aware till after the soldier's death.

In cases of colored persons who were slaves, and of Indians, the question of prior, undissolved marriage does not arise unless the soldier and claimant were married since his service and some former marriage, in slavery or otherwise, is held to have been confirmed and legalized.

Pensionable Minority of Children.

Since the act of June 7, 1794, which provided five years' half-pay for children of certain military officers, "while under the age of 16 years," the pensionable minority of children of deceased soldiers and sailors has been uniformly fixed at 16 years. Except as modified by the provisions of the act of June 27, 1890, in case of permanent helplessness, the pension of, or allowance on account of, children terminates with their at-

taining their 16th year, as provided by Section 4702, Revised Statutes.

Whenever the widow dies without receiving any part of the pension to which she was entitled, and whether or not she had previously remarried, the child or children under the age of 16 at the date of the father's death are entitled to the pension from the date of his death till they severally attain the age of 16. If the widow was in receipt of a pension, the child or children under 16, at the date of her death or remarriage, are entitled during the period from that date till they severally become 16. If the widow remarried and, in violation of law, continued to draw her pension, the children, if they continued to reside with her and were supported by her after her remarriage, can draw the pension only from the date of last payment to her, and not from the date of her remarriage.

Legitimacy of Children.

A provision of the act of March 3, 1873, as embodied in section 4704, Revised Statutes, is as follows:

"Sec. 4704. In the administration of the pension laws, children born before the marriage of their parents, if acknowledged by the father before or after the marriage, shall be deemed legitimate."

Colored and Indian children are regarded as legitimate if their mother, if living, would be re-

garded as the legal widow of the father under the pension laws.

Forfeiture by Widow.

Provisions of the acts of June 6, 1866, July 27, 1868, and March 3, 1873, are now embodied in section 4706, Revised Statutes, as follows:

"Section 4706. If any person has died, or shall hereafter die, leaving a widow entitled to a pension by reason of his death, and a child or children under 16 years of age by such widow, and it shall be duly certified under seal, by any court having probate jurisdiction, that satisfactory evidence has been produced before such court, upon due notice to the widow, that she has abandoned the care of such child or children, or that she is an unsuitable person, by reason of immoral conduct, to have the custody of the same, on presentation of satisfactory evidence thereof to the Commissioner of Pensions, no pension shall be allowed to such widow until such child or children shall have attained the age of 16 years, any provisions of law to the contrary notwithstanding, and the said child or children shall be pensioned in the same manner, and from the same date, as if no widow had survived such person, and such pension shall be paid to the guardian of such child or children; but if in any case payment of pension shall have been made to the widow, the pension to the child or children shall commence from the date to which her pension has been paid."

It is held that the Commissioner of Pensions need not, in a case of abandonment of children,

or of immoral conduct, await action of a "court having probate jurisdiction" before taking cognizance of the facts when presented to him in evidence.

As to "immoral conduct," the act of August 7, 1882, provides that—

"The open and notorious adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension from the commencement of such cohabitation."

A decision rendered November 15, 1887 (1 P. D., 427) holds:

"The words 'open and notorious adulterous cohabitation,' as used in the act of August 7, 1882, are descriptive merely of acts which would deprive a widow of her pension, and mean that any widow pensioner who is guilty of immoral and licentious acts, of an open and adulterous character, should forfeit her pension."

Also, that—

"The birth of a child out of wedlock is sufficient proof of open and notorious adulterous cohabitation to terminate a widow's pension under the act of August 7, 1882."

A decision rendered June 18, 1888, (2 P. D., 119,) holds:

"The phrase 'adulterous cohabitation' is not necessarily confined to the meaning given to the word in criminal decisions and in criminal juris-

prudence; but, as used in the act of August 7, 1882, must by regarded an descriptive of acts of immorality and lewdness."

It is held that all right and title to pension is irrevocably terminated from the commencement of such course of life, irrespective of subsequent reform, and whether the widow be already pensioned or simply claiming pension. It is held, however, that the law is not retroactive and applies only when "open and notorious adulterous cohabitation," within the construed meaning, as above, has existed since August 7, 1882. If there is a pensionable period antedating the alleged commencement of the cohabitation, the widow is entitled for such period.

If a widow is denied or deprived of her pension, as above, the children of the soldier, if otherwise entitled, succeed to her rights and she will not be recognized by the Pension Bureau as their "next friend," or as legal guardian if appointed such.

Remarriage of Widow.

Section 4708, Revised Statutes, embodying various enactments, is as follows:

"Sec. 4708. The remarriage of any widow, * * * entitled to pension, shall not bar her right to such pension to the date of her remarriage, whether an application therefor was filed before or after such marriage; but on the marriage of any widow, * * * having a pension, such pension shall cease."

If the widow remarries and is again left a widow, she does not thereby regain a title to the pension she had previously drawn. She may have acquired, however, through her last husband, a new right, which she may proceed to establish in the same manner and with every advantage as though she had never before drawn a pension.

As a rule, a widow who remarries and is afterwards divorced is not restored to her former status as "widow" under the pension laws. There are, however, some exceptions to the rule: as where a widow, after remarriage, finds that her new husband has a wife living from whom he has no legal separation, thereupon institutes legal proceedings, and obtains from the court a decree declaring the marriage void. The marriage must be declared void, not merely "dissolved." The facts necessary to be shown in order to secure such a decree, vary somewhat in the different States.

Permanently Helpless Children.

The following occurs in the act of June 27, 1890, (see page 103):

"Provided, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute, and such pensions shal

commence from the date of application therefor after the passage of this act."

As applied to the general pension law, this provision benefits all children heretofore or hereafter pensioned or entitled to be pensioned, because of the death of their father from causes proven as due to service and line of duty, provided they be under 16 at the date of the father's death and become "permanently helpless" within the meaning of the law at or before their 16th birthday.

As to what constitutes permanent helplessness, where idiocy or insanity does not exist, it is held that it is not necessary that the condition be such as to require regular and constant personal aid and attendance of another person. A decision rendered September 19, 1895, (8 P. D., 52,) says:

"We may judge of the meaning of the term 'permanently helpless' by its conjunction with the words 'insane, idiotic,' with which it is relatively synonymous as shown by the connecting adverb 'otherwise,' this identity of meaning having special reference to the ability of the beneficiary to earn a support. That is, in the sense that an insane or idiotic person would be incapable of earning a living or attending to his personal comforts, so one suffering from permanent injuries or disease of body, in a degree that would prevent him from performing any labor or from caring for himself, would be helpless and

entitled to the benefits conferred by the said proviso."

Rates.

The rate of widows' and children's pensions under the general law is "the same pension as the husband or father would have been entitled to had he been totally disabled," as provided by section 4702, Revised Statutes. (See page 58.) Thus the original pension of the widow or children of a lieutenant-colonel or officer of higher rank is $30 per month, the "total" disability rate of that rank. (See page 44.)

Additional Rate on Account of Children.

Section 4703, Revised Statutes, embodying acts of July 25, 1866, July 27, 1868, and March 3, 1873, is as follows:

"Sec. 4703. The pensions of widows shall be increased from and after the 25th day of July, 1866, at the rate of $2 per month for each child under the age of 16 years of the husband on account of whose death the claim has been, or shall be, granted. And in every case in which the deceased husband has left, or shall leave, no widow, or where his widow has died or married again, or where she has been deprived of he pension under the provisions of the pension-law, the pension granted to such child or children shall be increased to the same amount per month that would be allowed under the foregoing provisions to the widow, if living and entitled to a

pension: Provided, That the additional pension herein granted to the widow on account of the child or children of the husband by a former wife shall be paid to her only for such period of her widowhood as she has been, or shall be, charged with the maintenance of such child or children; for any period during which she has not been, or she shall not be, so charged, it shall be granted and paid to the guardian of such child or children: Provided, further, That a widow or guardian to whom increase of pension has been, or shall hereafter be, granted on account of minor children shall not be deprived thereof by reason of their being maintained in whole or in part at the expense of a State or the public in any educational institution, or in any institution organized for the care of soldiers' orphans."

It is held that during her widowhood the widow is entitled to draw the additional allowance on account of a permanently helpless child, irrespective of the child being over 16 or having arrived at years of maturity.

Increase of Rates.

The act of March 19, 1886, is in the nature of an amendment of section 4703 and 4707, Revised Statutes, (see pages 72 and 77,) and provides as follows:

"That from and after the passage of this act the rate of pension for widows, minor children, and dependent relatives now on the pension-roll, or hereafter to be placed on the pension-roll, and

entitled to receive a less rate than hereinafter provided, shall be $12 per month; and nothing herein shall be construed to affect the existing allowance of $2 per month for each child under the age of 16 years: Provided, That this act shall apply only to widows who were married to the deceased soldier or sailor prior to its passage and to those who may hereafter marry prior to or during the service of the soldier or sailor. And all acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

Thus the rate of widow's pension in cases where the rate according to "total" of rank is less than $12 per month is increased to $12 from March 19, 1886; provided, always, that the widow was married to the soldier or sailor before March 19, 1886, or if married to him since that date, then prior to or during his service.

The rate of children's pension is increased, as above, irrespective of the date or time of the marriage of the mother to the father.

It should be borne in mind that the foregoing has no reference to pension under the act of June 27, 1890.

Survivorship.

When children are entitled to pension, the widow being dead or remarried, they are jointly entitled to the widow's rate, and each, in addition, to the additional rate of $2 per month, established by the act of July 25, 1866. As each

minor becomes 16 his portion of the widow's rate is divided among those not yet 16. The additional rate of $2 does not survive to the others, but ceases as each becomes 16.

Birth of Children.

A decision rendered February 27, 1897, holds:

"When it is apparent that the children of a soldier are entitled to pension the fact that the exact dates of birth cannot be proved is not a sufficient ground for rejecting their claim. If, upon the evidence, the dates of birth can be approximately fixed with a reasonable degree of certainty, this should be done and the claim allowed." (8 P. D., 468.)

A child of the soldier or sailor born after his death is equally entitled to pension as though born before his death. Pension under the general law for or on account of such child would commence from date of its birth.

Centralia Massacre.

The act of March 3, 1875, provides—

"That the provisions of existing pension laws be, and the same are hereby, extended to the widows, children, dependent mothers and fathers, or orphan brothers and sisters, in the order named, of those lately discharged soldiers of the Army of the United States who were murdered by guerrillas at Centralia, Missouri, in 1864 [Sep-

minor becomes 16 his portion of the widow's rate is divided among those not yet 16. The additional rate of $2 does not survive to the others, but ceases as each becomes 16.

Birth of Children.

A decision rendered February 27, 1867, holds:

"When it is apparent that the children of a soldier are entitled to pension the fact that the exact dates of birth cannot be proved is not a sufficient ground for rejecting their claim. If, upon the evidence, the dates of birth can be approximately fixed with a reasonable degree of certainty, this should be done and the claim allowed." (8 P. D., 68.)

A child of the soldier or sailor born after his death is equally entitled to pension as though born before his death. Pension under the general law for or on account of such child would commence from date of its birth.

Centralia Massacre.

The act of March 3, 1875, provides—

"That the provisions of existing pension laws be, and the same are hereby, extended to the widows, children, dependent mothers and fathers, or orphan brothers and sisters, in the order named, of those lately discharged soldiers of the Army of the United States who were murdered by guerrillas at Centralia, Missouri, in 1864 [Sep-

tember 27,] while being transported on the North Missouri Railroad.

"Sec. 2. That the provisions of this act shall be construed to extend to the widows, children, dependent mothers and fathers, or orphan brothers and sisters, in the order named, of any member of the Missouri militia who was murdered as aforesaid by guerrillas at Centralia, Missouri, in 1864, [September 27.]

CHAPTER V.

DEPENDENT PARENTS, BROTHERS AND SISTERS.

The General Law—Present Dependence of Parent—Ninety Days' Service Not Required—Remarriage—Rates.

The General Law.

The first pension provision for dependent parents, brothers and sisters, of soldiers and sailors dying from causes attributable to the service and line of duty, was contained in the act of July 14, 1862. Mothers and sisters were then provided for; fathers and brothers not being included until the act of June 6, 1866. The act of July 27, 1868, fixed the order of title as follows: Mothers, fathers, then brothers and sisters jointly.

As embodied in section 4707, Revised Statutes, the foregoing legislation is as follows:

"Sec. 4707. If any person embraced within the provisions of sections 4692 and 4693 has died since the 4th day of March, 1861, or shall hereafter die, by reason of any wound, injury, casualty, or disease, which, under the conditions and limitations of such sections, would have

entitled him to an invalid pension, and has not left or shall not leave a widow or legitimate child, but has left or shall leave other relative or relatives who were dependent upon him for support in whole or in part at the date of his death, such relative or relatives shall be entitled, in the following order of precedence, to receive the same pension as such person would have been entitled to had he been totally disabled, to commence from the death of such person, namely: First, the mother; secondly, the father; thirdly, orphan brothers and sisters under 16 years of age, who shall be pensioned jointly: Provided, That where orphan children of the same parent have different guardians, or a portion of them only are under guardianship, the share of the joint pension to which each ward shall be entitled shall be paid to the guardian of such ward: Provided, That if in any case said person shall have left father and mother who are dependent upon him, then, on the death of the mother, the father shall become entitled to the pension, commencing from and after the death of the mother; and upon the death of the mother and father, or upon the death of the father and the remarriage of the mother, the dependent brothers and sisters under 16 years of age shall jointly become entitled to such pension until they attain the age of 16 years, respectively, commencing from the death or remarriage of the party who had the prior right to the pension: Provided, That a mother shall be assumed to have been dependent upon her son within the meaning of this section if, at the date of his death, she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of

said son or of any other persons not legally bound to aid her in support; and if, by actual contributions, or in any other way, the son had recognized his obligations to aid in support of his mother, or was by law bound to such support, and that a father or a minor brother or sister shall, in like manner and under like conditions, be assumed to have been dependent, except that the income which was derived or derivable from his actual or possible manual labor shall be taken into account in estimating a father's means of independent support: Provided, further, That the pension allowed to any person on account of his or her dependence, as hereinbefore provided, shall not be paid for any period during which it shall not be necessary as a means of adequate subsistence."

In fathers' and mothers' claims for pension on account of a son whose death was due to the service and line of duty, there is now no advantage in making application under the general law, as above, unless the soldier was a commissioned officer when the disability to which his death is attributed originated.

Brothers and sisters, however, are entitled only under the law as above, and must therefore show dependence on the soldier or sailor at the date of his death.

Present Dependence of Parent.

The act of June 27, 1890, amended the general law as to parents of soldiers and sailors dying

of causes attributable to the service and line of duty, and provided as follows:

"Sec. 1. That in considering the pension claims of dependent parents, the fact of the soldier's death by reason of any wound, injury, casualty, or disease which, under the conditions and limitations of existing laws, would have entitled him to an invalid pension, and the fact that the soldier left no widow or minor children having been shown as required by law, it shall be necessary only to show by competent and sufficient evidence that such parent or parents are without other present means of support than their own manual labor or the contributions of others not legally bound for their support: Provided, That all pensions allowed to dependent parents under this act shall commence from date of the filing of the application hereunder and shall continue no longer than the existence of the dependence."

As to the above enactment, a decision rendered December 8, 1894, says:

"Section 1 of the act of June 27, 1890, must be construed in connection with section 4707, R. S., and the words 'other present means of support' are held to mean 'other present means of adequate support.'" (7 P. D., 420.)

Ninety Days' Service not Required.

Though the foregoing amendment of the general pension law as to parents was a part of the act of June 27, 1890, (see page 85,) the provision as to service of "ninety days or more * * dur-

ing the late war of the rebellion," contained in said act, has no reference to parents' claims, but only to the claims made thereunder of soldiers and sailors of the late war, their widows and children.

Remarriage.

Section 4708, Revised Statutes, embodying various enactments, provides as follows:

"Sec. 4708. The remarriage of any * * dependent mother, or dependent sister, entitled to pension shall not bar her right to such pension to the date of her marriage, whether an application therefor was filed before or after such marriage; but on the remarriage of any * * dependent mother, or dependent sister, having a pension, such pension shall cease."

In claiming under the general law (Section 4707, Revised Statutes, as above), if the mother remarried subsequent to her son's death, the application must have been filed before July 1, 1880, (see "Arrears of Pension,") to entitle her to any pension, and then only for the period from the date of the son's death to the date of her remarriage.

As to the claim of a mother under the act of June 27, 1890, a decision rendered August 18, 1892, holds—

"A mother's remarriage prior to filing application under the act of June 27, 1890, is no bar to pension under said act." (6 P. D., 30.)

If a mother entitled to pension, under the general law or the act of June 27, 1890, remarries after filing application, she can still obtain the pension from date of filing application to date of remarriage.

A decree of court setting aside the remarriage as void because of illegality will effectually restore the mother's pensionable status; but not so a mere divorce or separation.

Legitimacy.

In a father's claim, whether under the general law or the act of June 27, 1890, it is essential that the son was a legitimate child (recognized by the father as his child, before or after his marriage to the mother, if born out of wedlock); but in a mother's or brother and sister's claim legitimacy is not required.

Brothers and Sisters.

Brothers and sisters are not entitled under the act of June 27, 1890, but only as indicated in section 4707, Revised Statutes, as above.

Their title under the general law is held not to be affected by the support of a step-father or his ability to support them. So if the mother of the soldier or sailor was not dependent, under the general law, at the time of his death, through having remarried, the brothers and sisters of the

deceased would be entitled as though no mother survived him.

Brothers and sisters of the half blood are equally entitled with those of the whole blood, and whether legitimate or not.

In addition to being required to be under the age of 16 at the date of the death of the soldier or sailor, and at the date when their title accrued if the mother or father survived, it is held by a decision rendered April 10, 1896, (8 P. D., 137,) that brothers and sisters applying since July 1, 1880, are not entitled if over 16 at date of filing application.

Rates.

The rate of pension under the general law for parents, brothers and sisters was fixed by section 4707, Revised Statutes, at the "same pension as such person [the deceased soldier or sailor] would have been entitled to had he been totally disabled." (See "Total" Disability Rates, page 44.)

The act of March 19, 1886, amended section 4707, Revised Statutes, by providing that "dependent relatives now on the pension roll, or hereafter to be placed on the pension roll, and entitled to receive a less rate [according to "total" disability rate of soldier] than hereinafter provided, shall be $12 per month."

Parents claiming under the act of June 27, 1890, are entitled to the uniform rate of $12 per

month, without regard to the rank of the deceased son at the time of origin of the disability to which his death is attributed. This is because of the following provision of the act of June 27, 1890:

"And provided further, That rank in the service shall not be considered in applications filed under this act."

CHAPTER VI.

ACT OF JUNE 27, 1890.

Origin—Invalid Pension—Who are Entitled—Term of Service. The Duration of the War—Pensionable Disability—Age of Claimant—Vicious Habits—Widows and Children.—Marriage Before June 27, 1890—Remarriage—Pensionable Minority—Permanently Helpless Children—Dependence—Means of Support. Rates of Widows and Children—Honorable Discharge—Militia.

Origin.

The pension law of June 27, 1890, was the result of a movement favoring service pensions for those who served honorably in the military or naval service of the United States during the war of the rebellion, as well as of the evident need of some provision for those whose disabilities were of service origin but who were unable to satisfy the technical requirements of the Pension Bureau. Possibly, too, it was in satisfaction of a less liberal measure vetoed more than three years previously by President Cleveland.

Invalid Pension.

As to invalid pension its provision is as follows:

"Sec. 2. That all persons who served 90 days or more in the military or naval service of the United States during the late war of the rebellion

and who have been honorably discharged therefrom, and who are now or who may hereafter be suffering from a mental or physical disability of a permanent character, not the result of their own visious habits, which incapacitates them from the performance of manual labor in such a degree as to render them unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States and be entitled to receive a pension not exceeding $12 per month, and not less than $6 per month, proportioned to the degree of inability to earn a support; and such pension shall commence from the date of the filing of the application in the Pension Office, after the passage of this act upon proof that the disability then existed, and shall continue during the existence of the same: Provided, That persons who are now receiving pensions under existing laws, or whose claims are pending in the Pension Office, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this act; and nothing herein contained shall be so contrued as to prevent any pensioner thereunder from prosecuting his claim and receiving his pension under any other general or special act: Provided, however, That no person shall receive more than one pension for the same period: And provided further, That rank in the service shall not be considered in applications filed under this act."

Who are Entitled.

In the generality of its provision as to what classes of persons are entitled to invalid pension under the act, there is no parallel among the various other pension acts. The law says, "all persons * * in the military or naval service." This was first construed as meaning all of the several classes of persons specified in section 4693, Revised Statutes, (see page 29,) as entitled to invalid pension under the general law for disability incurred in service and line of duty. Thus, contract surgeons, and provost-marshals appointed under the act of March 3, 1863, were held entitled. But the late Administration held this to be error, and that only officers and enlisted men are entitled, and this holding still stands.

Term of Service.

Section 4701, Revised Statutes, (see page 36,) is applicable in determining the period of service to have been the requisite "90 days or more."

It is held that the Pension Bureau must be governed by the records of the War Department as to date of enlistment, irrespective of the date from which the claimant was paid.

The Duration of the War.

The act of July 14, 1862, (see section 4692, Revised Statutes, page 28,) apparently recognized

March 4, 1861, the date of President Lincoln's inauguration, as the commencement of the "war," though Fort Moultrie and Castle Pinckney, at Charleston, S. C., were occupied by South Carolina State troops as early as December 28, 1860, and on January 9, 1861, the steamer "Star of the West," bearing reinforcements and supplies for Fort Sumter, was fired on by the rebel batteries in Charleston Harbor and compelled to return to New York without landing her troops and cargo.

The Supreme Court, in a case ("The Protector," 12 Wallace, 700,) involving the question as to during what period the running of the statute of limitations against a debt due in a lately rebellious State should be regarded as suspended, held that for this purpose the war was to be regarded as having begun April 19, 1861, and ended August 20, 1866. The first-named date was that of the first proclamation of President Lincoln declaring the blocakde of ports of the rebellious States. The last-named date was that of the proclamation of President Johnson that "the said insurrection is at an end, and that peace, order, tranquility and civil authority now exist in and throughout the whole of the United States o America"; a former proclamation of June 13, 1865, having had reference to the State of Tennessee only, and that of April 2, 1866, having reference to the other rebellious States with the exception of Texas.

The War Department has adopted April 15, 1861, and August 20, 1866, as the dates of commencement and termination, respectively, of the war. The date of commencement, April 15, 1861, is obviously error; because as early as April 10, 1861, District of Columbia militia was organized and mustered into the United States service for three months for the defense of the Capital.

A decision rendered by the Interior Department on January 14, 1892, (5 P. D., 258,) held that for pensionable purposes, the war begun March 4, 1861, and ended August 20, 1866, and that service rendered between those dates was to be regarded as rendered "during the war of the rebellion."

A decision rendered December 8, 1894, held:

"1. The technical legal termination of the war of the rebellion was August 20, 1866.

"2. Under Section 2 of the act of June 27, 1890, service must have been rendered both during and in some necessary connection with the war of the rebellion, as a part of its belligerent operations.

"3. Service rendered after July 1, 1865, will be presumed to have not been in said war; and the burden of proof will be upon claimants to show by positive and satisfactory evidence that such service was in some actual connection with the war as existing at the time the service was rendered.

"4. Service rendered after April 2, 1866, must be shown to have been rendered in some connec-

tion with the war as existing in the State of Texas.

"5. Service rendered within the State of Tennessee after June 13, 1865, will likewise be presumed not to have been in said war, unless shown to have had some necessary connection with the war elsewhere." (7 P. D., 453.)

The wording of the law, "during the late war of the rebellion," would seem to preclude a holding that the "services must have been rendered * * in some necessary connection with the war * * as a part of its belligerent operations"; especially as other service-pension acts, or acts in the nature of service-pension acts, distinctly require service "in" the particular war or "en route thereto," etc.

A decision rendered April 5, 1895, held:

"1. Enlistments in the loyal States after April 13, 1865, will not be deemed enlistments in or for the war of the rebellion, and any service rendered under such enlistments will be presumed not to have been rendered in the war of the rebellion, and to establish the contrary, the claimant will be required to show affirmatively that his said subsequent service was rendered in direct connection with active military duty in aid of suppressing the rebellion.

"2. Any enlistment in any other of the States, Territories, or District of Columbia, made after June 1, 1865, or any white or colored troops, will not be deemed an enlistment in or for the war of the rebellion, and any service rendered under an

enlistment or re-enlistment subsequent to June 1, 1865, is presumptively not a service in the war of the rebellion, and to overcome such presumption active war service in aiding the suppression of the armed force of the Confederate States should be shown subsequent to such enlistment.

"3. That enlistments in the U. S. Navy after July 1, 1865, were not enlistments in or for the war of the rebellion, and the burden of proof to overcome the presumption is upon the claimant to show, by satisfactory evidence, that such service was active war or naval service, in aiding the suppression of the rebellion." (7 P. D., 532.)

It appears, however, that bounty was allowed for enlistments into the Regular Army as late as June 30, 1865, and until as late as April 30, 1865, for enlistments into the volunteer service, including colored troops.

A decision rendered September 9, 1897, (9 P. D.) sustains the holding above quoted with reference to service "during" the war and the termination of the war; and another decision of the same date (9 P. D.) sustains the holding of 1892, that, for pensionable purposes, the war began March 4, 1861.

Pensionable Disability.

As to what constitutes pensionable disablement under the act of June 27, 1890, was first defined by Order No. 164 of the Commissioner of Pensions (Hon. Green B. Raum), dated October

15, 1890, and approved by the Assistant Secretary of the Interior (Hon. Cyrus Bussey), as follows:

"In regard to fixing rates of pensions under the act of June 27, 1890.

"That all claimants under the act of June 27, 1890, showing a mental or physical disability or disabilities of a permanent character not the result of their own vicious habits, and which incapacitate them for the performance of manual labor, rendering them unable to earn a support in such a degree as would be rated under former laws at or above $6 and less than $12 shall be rated the same as like disabilities of service origin; and that all cases showing a pensionable disability which, if of service origin, would be rated at or above $12 per month, shall be rated at $12 per month."

The above ruling continued in force unimpaired until a decision rendered January 7, 1893, holding:

"The basis of rates under the act of June 27, 1890, is inability to earn a support by reason of incapacity for manual labor due to disability not the result of vicious habits.

"Schedule or nominal rates will not be added together to make up a rate under said act, but the rate will be based on the combined effect of all the cases involved, upon the applicant's capacity for manual labor." (6 P. D., 193.)

The above was the beginning of the creation of the difference between pensionable disablement under the general law and pensionable disablement under the act of 1890, on the assump-

tion that disablement for earning a support by manual labor is in some respect or manner essentially different from disablement for the performance of manual labor to earn a support.

It remained for the then incoming Administration to give fuller force and effect to the decision of January, 1893, as above, by a decision rendered May 27, 1893, (Hon. John M. Reynolds, Assistant Secretary of the Interior,) in the case of Charles T. Bennett, holding:

"1. The basis of pension under sections 4692 and 4693, Revised Statutes, is disability by reason of wound, injury, or disease contracted while in the service and in line of duty.

"2. The basis of pension under section 2, act June 27, 1890, is incapacity, due to any permanent mental or physical disability not the result of vicious habits, to such a degree as renders claimant unable to earn a support by manual labor.

"3. Disabilities incurred while in the service and in the line of duty, and incapacity for earning a support befalling a claimant for pension after his service had ceased, are placed by the pension laws on an entirely different footing.

"4. Disability incurred during service and in line of duty is pensionable without regard to capacity to earn a support, and is rated under the provisions of the Revised Statutes without reference to this condition.

"5. Disability resulting from causes other than of service origin are pensionable only under the provisions of the second section of the act of

June 27, 1890, when incapacity to labor joins with incapacity to earn a support, and the grades of rating thereunder are dependent upon these two conditions.

"6. When by Order No. 164 of the Commissioner of Pensions, Oct. 15, 1890, it was declared that disabilities under the act of June 27, 1890, should be rated as if of service origin, the very principle which governed ratings under said act was displaced and a rule applicable to a different law was substituted.

"7. Neither the Secretary of the Interior, nor the Commissioner of Pensions can, by order or by practice, supersede an act of Congress. The power of the Department, so far as its orders and practice are concerned, is limited to an execution of the law; it ceases when an effort is made to supercede the law."

On the same date, the Sectetary of the Interior, Hon. Hoke Smith, addressed the Commissioner of Pensions as follows:

"Order No. 164, signed, 'Green B. Raum, Commissioner of Pensions,' and approved, 'Cyrus Bussey, Assistant Secretary,' of date, October 15, 1890, is hereby revoked.

"You will prepare, for approval of the Secretary, new rules and regulations covering the proof of the right to pensions and rates of same in accordance with the provisions of section second of the act of Congress approved June 27, 1890.

"Your attention is directed to the fact that the disabilities which are pensionable under this section must be of a permanent character, incapacitating for the performance of manual labor to

such a degree as to produce inability to earn a support. You will observe, also, that the rate of pension is fixed at not less than $6 nor more than $12 per month, proportioned to the degree of inability to earn a support.

"You will have an examination made to determine what pensions have heretofore been allowed under section second of the act approved June 27, 1890, in disregard of the terms of said act, and in conflict with the ruling of this Department in the case of Charles T. Bennett, this day transmitted to you."

In accordance with the above communication the Commissioner of Pensions (Hon. William Lochren) issued Order No. 225, dated June 9, 1893, as follows:

"1. A claim for pension under second section of the act of June 27, 1890, can only be allowed upon proof of mental or physical disability of a permanent character, not the result of the claimant's own vicious habits, incapacitating him from the performance of manual labor in such a degree as to render him unable to earn a support.

"2. No specific injury or disability can, as such, have a pensionable rating under that act, nor be considered otherwise than as it affects the capacity of the claimant to perform ordinary manual labor.

"3. Proof that the disability is not the result of the claimant's own vicious habits is requisite; and therefore the causes and circumstances of the origin of the disability should be shown by the evidence furnished in support of the claim

for pension, so far as can be done; and by persons other than the claimant.

"4. To give claimant a pensionable status under this act, the disability must be such as to incapacitate him from the performance of manual labor in such a degree as to render him unable to earn a support; yet the act recognizes differences in the degree of such pensionable disability, giving $12 per month in case of the greatest, and $6 per month in case of the lowest degree of such pensionable disability, rendering claimant unable to earn a support by manual labor. It also provides for intermediate ratings of such pensionable disability. The proper ratings under this act will therefore be made in accordance with such rules for rating as the Medical Referee shall prescribe, subject to the approval of the Commissioner of Pensions."

The "rules for rating" prescribed by the Medical Referee of the Pension Bureau were in a circular dated June 12, 1893, as follows:

"In the matter of rating cases under the act of June 27, 1890, the following directions will serve as landmarks only, and will be subject to such variations as the particular case may require:

"The ratings will be $12, $10, $8, and $6.

"The rating of $12 will be allowed only in the following class of cases:

"(1) In cases where the claimant is clearly disabled from performing any effective manual labor.

"(2) In loss of either hand or arm.

"(3) In total deafness of both ears.

"The minimum rate shall be allowed for a disability equivalent to anchylosis of elbow joint.

"The ratings between $12 and $6 will be given in proportion as the claimant is disabled from earning a support by manual labor.

"If there are two or more disabilities, each demanding a rate of $6, the rate of $8 only shall be allowed, and if there are two or more disabilities, each demanding a rate of $8, the rating of $10 shall de allowed; but two or more disabilities, each demanding a rating below $6, shall not be added to make a minimum rating, and such cases shall be rejected.

"All specific ratings as published in the book of instructions have no application in adjudicating claims under this act."

The above circular was revoked by Order No. 241, of the Commissioner of Pensions, dated September 2, 1893, as follows:

"The circular of June 12, 1893, in respect to rating cases under the act of June 27, 1890, is with drawn. Hereafter in affixing rates under this act the Medical Referee or the Medical Officer in the Board of Revision shall weigh each disability and determine the degree each disability or the combined disabilities, disables the claimant from earning a support by manual labor, and a rate corresponding to this degree shall be allowed.

"In cases in which the pensioner has reached the age of 75, his rate shall not be disturbed if he is receiving the maximum, and if he is not a pensioner, he shall receive the maximum for senilty alone, if there are no special pensionable disabilities shown."

evident that practically as great a degree of disablement is requisite to the maximum rating of $12 under the act of 1890 as would entitle the claimant to $30 per month ("second grade"; see page 48) under the general law if all causes of his disablement were proven due to the service and line of duty.

A decision rendered August 11, 1897, (9 P. D., 106,) affirms a decision rendered March 11, 1897, (Mr. Assistant Secretary Reynolds,) holding—

"Where it is shown that a claimant for invalid pension under the act of June 27, 1890, is prevented from following his trade * * * and because of his advanced age it is not probable that he could earn a support by any other occupation the provisions of said act may properly be held to apply. The reasonable and just interpretation of said act is not whether by chance or charity the soldier can find some means of supplying the necessities of life, but whether he is disabled in a degree preventing him from following his trade or some kindred occupation which might yield him a support."

Age of Claimant.

The law of 1890 itself makes no specific provision for claimants for invalid pension thereunder who have reached a certain age. But a decision rendered February 1, 1893, held:

"Old age or senility is a legal disability under the act of June 27, 1890, and examining surgeons should estimate the amount of disability arising

therefrom for the performance of manual labor and for earning a support by manual labor." (6 P. D., 259.)

The recognition of disability from age as pensionable under the act of 1890 is further instanced by Order No. 241 of the Commissioner of Pensions, dated September 2, 1893, already noted above, in which it is provided that if the age of 75 has been reached, the claimant or pensioner "shall receive the maximum ($12) for senility alone, if there are no special pensionable disabilities shown."

A most recent recognition of age as a factor in pensionable disablement under the act of 1890 is a decision rendered July 7, 1897, holding—

"A claimant who has attained the age of 65 years shall be deemed entitled to at least the minimum rate of pension unless the evidence discloses an unusual vigor and ability for the performance of manual labor in one of that age." (9 P. D., 68.)

Vicious Habits.

The following decisions will indicate the official views that obtain relative to "vicious habits" under the act of 1890.

A decision dated November 17, 1894, holds:

"In claims filed under the act of June 27, 1890, it must appear that the disabilities which occasion the incapacity for earning a support are not due to any vicious habits which a person rea-

sonably careful would avoid and recognize as liable to seriously impair his physical condition." (7 P. D., 402.)

Also that -

"The legal effect upon title of a claimant for pension who resorts to vicious or harmful habits is akin to the effect contributory negligence would have were he suing for damages. It must appear that the disabilities which occasion the incapacity for earning a support are not due to any habit which a person ordinarily careful of health would avoid." (7 P. D., 402.)

A decision dated February 29, 1892, holds:

"The rejection of a claim under section 2 of the act of June 27, 1890, on the ground that 'the alleged disabilities were contracted while soldier was in confinement under sentence for desertion' is error, as said act does not make line of duty a condition of pension, and a disability so incurred can not be considered as due to vicious habits." (5 P. D., 332.)

A decision dated November 28, 1892, holds:

"The evidence tending strongly to show soldier purposely inflicted the wound on his hand, he having retired to a lonely place, unaccompanied, a short time previous to the second battle of Bull Run, and his statements being contradictory, it is held said wound was due to vicious habits, and is not pensionable under the act of June 27, 1890." (6 P. D., 104.)

A decision rendered June 15, 1895, holds:

"2. Where there are grounds for suspecting that the disability is a result of vicious habits, the kind and amount of evidence necessary to overcome that suspicion will vary according to the circumstances of the case.

"3. In general, where there is no apparent ground for suspecting vicious habits, and, so far as can be ascertained, claimant has always been a man of good habits and of good repute for credibility, the presumption should be in favor of the claim." (7 P. D., 578.)

The above decision has been affirmed by instructions of Mr. Assistant Secretary Davis to the Commissioner of Pensions, dated July 28, 1897, with the added provision—

"That where the nature of the disease, wound, or injury is such as to show that it is not due to vicious habits, the Commissioner of Pensions may, in his discretion, accept the sworn statement of the applicant as sufficient." (9 P. D., 93.)

Widows and Children.

The provision which the act of June 27, 1890, makes for the widows and children of soldiers and sailors of the late war who served 90 days or more and were honorably discharged, is as follows:

"Sec. 3. That if any officer or enlisted man who served 90 days or more in the Army or Navy of the United States during the late war of the

rebellion, and who was honorably discharged, has died, or shall hereafter die, leaving a widow without other means of support than her daily labor, or minor children under the age of 16 years, such widow shall upon due proof of her husband's death, without proving his death to be the result of his army service, be placed on the pension roll from the date of the application therefor under this act, at the rate of $8 per month during her widowhood, and shall also be paid $2 per month for each child of such officer or enlisted man under 16 years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of 16 years, such pension shall be paid such child or children until the age of 16: Provided, That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statue, and such pensions shall commence from the date of application therefor after the passage of this act: And provided further, That said widow shall have married said soldier prior to the passage of this act."

All that has been heretofore said under the head of "General Law Pension of Widows and Children" (see page 57) relative to legality of marriage, and as to prior marriage, forfeiture of pension by widow, and legitimacy of children, is equally applicable here

Presumption of Death.

The act of March 13, 1896, provi

"That in considering claims filed under the pension laws, the death of an enlisted man or officer shall be considered as sufficiently proved if satisfactory evidence is produced establishing the act of the continued and enexplained absence of such enlisted man or officer from his home and family for a period of seven years, during which period no intelligence of his existence shall have been received. And any pension granted under this act shall cease upon proof that such officer or enlisted man is still living."

It is held that "it is not the mere fact of absence out of which death is to be presumed, whether the time be long or short, but that the facts attending such absence must be such that the absence of the party cannot be accounted for on any other theory than that of death." (8 P. D. 175.)

Death in Service.

A decision rendered August 6, 1892, (6 P. D., 27,) and other decisions, hold that death in the service is not equivalent to an honorable discharge within the meaning of the act of June 27, 1890. Thus, if a soldier or sailor died in the service during the war of the rebellion under circumstances that would not be regarded as pensionable line of duty under the general pension law,

it may happen that his widow or other heirs have no pension title under any law.

A decision rendered March 1, 1894, holds:

"When soldier has served a term of 90 days or more in the military or naval service of the United States during the late war of the rebellion, and has been honorably discharged therefrom, re-enlists, and dies during his subsequent term of service, his death not being the result of a violation of any law, rule, or regulation of the military or naval service, the requirements of the act of June 27, 1890, as to length of service and honorable discharge are fulfilled, and his widow is entitled to pension on compliance with the other conditions of the act." (7 P. D., 197.

Marriage Before June 27, 1890.

The proviso of the act of 1890, "that said widow shall have married said soldier prior to the passage of this act," makes it necessary that the widow, to be entitled under the act, must have been married to the soldier or sailor, either according to statute or according to common law form, before June 27, 1890.

Not only is the widow barred if not married to the soldier before June 27, 1890, but the children of such marriage are also held to be barred, though it was first held that the children would be entitled as though no widow survived.

Remarriage.

If the widow remarries before applying for pension under the act of 1890, there is no pensionable period, because pension under the act commences only from date of filing of application under the act in the Pension Bureau, and she may not be pensioned beyond the date of her remarriage. If her remarriage should be set aside by a competent court as void for illegality, she would be entitled.

Pensionable Minority.

As all pensions under the act of 1890 commence only from date of filing of application thereunder in the Pension Bureau, children to be entitled under the act must be under the age of 16 at date of filing of the application. The pensionable period ceases when the age of 16 is reached, as under the general law, save in cases where the child is regarded as permanently helpless within the meaning of the statute.

Permanently Helpless Children.

To be entitled under the "permanently helpless" provision of the act of 1890, namely, "that in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability," children applying

for pension under the act must be otherwise entitled. They are barred if over 16 at date of filing application under the act, though they would be pensionable under the general law without regard to age at date of filing application

Dependence.

The provision of the act of 1890 that a widow applying thereunder must be "without other means of support than her daily labor," to be entitled to pension under the act, is so construed as to entitle many who according to the strict letter of the law are no more entitled than many who are denied pension under the law.

A decision rendered March 10, 1893, held:

"The act of June 27, 1890, does not require that a widow shall be destitute of all means of support other than her daily labor, nor does it pension her if her other means are so nearly adequate that the pension would create entire immunity from labor." (6 P. D., 294.)

The foregoing was modified by a decision rendered September 6, 1894, which holds:

"1. When a widow's income from other sources added to the proceeds of reasonable effort on her part, affords her a comfortable support, she is not entitled to pension under the third section of the act of June 27, 1890.

"2. In general, and under ordinary circumstances, where a widow's income from sources

independent of her daily labor is in excess of such pension, she does not occupy a pensionable status under said section." (7 P. D., 278.)

Also by a decision rendered November 17, 1894, as follows:

"In general where a widow is shown to have, from sources independent of her labor, an income considerably in excess of the amount which the act of June 27, 1890, provides for widows who have no income or means of support outside of their earnings, such widow does not come within the class for whose benefit said act was intended." (7 P. D., 380.)

It would seem that if the law does not mean that a widow with any "other means of support than her daily labor" is not entitled, there is in any event no authority for the fixing of an arbitrary limit irrespective of the circumstances of the particular case. It would seem reasonable and within the law to regard a widow as entitled if so circumstanced as to be obliged to work for wages or carry on a business to gain a livelihood, having no sufficient "other means of support than her daily labor." A substantially similar provision in the same law, relative to pare of soldiers and sailors, is so construed.

page 80.)

A decision rendered July 10, 1897, holds:

"When it is proved that a widow by reason age, or permanent and physical or men

Rates of Widows and Children.

It will be noted that the act of March 19, 1886, (see page 73) increasing the rates of pension of widows, children and dependents under the general law, does not apply to pensions under the act of 1890. The rates of pension of widows and children under this act are, accordingly, $8 per month with $2 additional per month for each child of the soldier or sailor under 16 at date of filing of application under the act.

Honorable Discharge.

A decision rendered September 13, 1895, (8 P. D., 59,) holds that an honorable discharge from all service contracted to be performed during the war of the rebellion is necessary, to entitle a soldier or sailor to invalid pension under the act of 1890. Thus, if a soldier enlisted, deserted, enlisted again and was honorably discharged; or enlisted, was honorably discharged, enlisted again, and deserted, he is not in either case entitled to pension under the act, unless the War Department will remove the charge of desertion and grant an honorable discharge.

A decision rendered February 8, 1896, holds, as to widows and children, however, that—

"Desertion of soldier from Regular Army, in which he enlisted subsequent to the close of the war of the rebellion, not a bar to widow's claim for pension under act of June 27, 1890." (8 P D., 82.)

As to title to invalid pension under the act of 1890 in case of desertion from an enlistment made after the close of the war, a decision rendered October 27, 1896, holds:

"Desertion from the Regular Army under an enlistment subsequent to the war of the rebellion is not a bar to allowance of pension under the act of June 27, 1890." (8 P. D., 316.)

A decision rendered May 12, 1893, holds:

"A discharge of an enlisted man by reason of his promotion to a higher rank (lieutenant) is not a discharge within the meaning of the act of June 27, 1890; the purpose of said discharge is not to terminate his service but to retain him in the service in a higher grade, and when such soldier was, after his promotion, dismissed from the service by sentence of court-martial he cannot be held to have been honorably discharged." (8 P. D., 530.)

Militia.

The joint resolution dated February 15, 1895, provides as follows:

"That the provisions of the act of June 27, 1890, be, and are hereby, extended to include the officers and privates of the Missouri State Militia and the Provisional Missouri Militia who served 90 days during the late war of the rebellion, and were honorably discharged, and to the widows and minor children of such persons. The provisions of this act shall include all such persons now on the pension rolls, or who may hereafter apply to be admitted thereto."

The above has reference to the Missouri militia provided for, as to pension under the general law, by section 4722, Revised Statutes. (See page 37.)

A decision rendered May 29, 1897, holds:

"1. Pennsylvania Emergency Militia, while serving in the Army of the United States, under command of United States officers, in response to the call of the President, were a part of that Army while so serving, and are, for that time and as regards the character of the service, brought within the scope of the first subdivision of section 4693, Revised Statutes, and the act of June 27, 1890, for pensionable purposes, other conditions of those laws having been met.

"2. The peculiar conditions under which said militia were recognized as a part of the Army, the manner in which received into and released from the service of the United States, obviated the necessity of enlistment and discharge in the usual manner, the records of the State in that respect being taken as a substitute for the records of the War Department, and the period of actual service being counted as if rendered under enlistment by United States officers." (19 P. D., 21.)

CHAPTER VII.

SERVICE PENSIONS

Navy—War of 1812—Revolutionary War Widows—Mexican War Duration of the Mexican War—Period of Service—Revenue Marine—Powell's Battalion, Missouri Mounted Volunteers. Gray's Battalion, Arkansas Volunteers—Gilpin's Battalion, Missouri Volunteers—Increase of Mexican War Service Pension—Indian Wars, 1832 to 1842—Citizenship—Period of Indian War Service—Commencement of Florida Indian Wars—Army Nurses.

Navy.

The act of March 2, 1867, as embodied in sections 4756 and 4757, Revised Statutes, and amended by the act of December 23, 1886. provides as follows:

"Sec. 4756. There shall be paid out of the naval pension fund to every person who, from age or infirmity, is disabled from sea service, but who has served as an enlisted person, or an appointed petty officer, or both, in the Navy or Marine Corps for the period of 20 years, and not been discharged for misconduct, in lieu of being provided with a home in the Naval Asylum, Philadelphia, if he so elects, a sum equal to one-half the pay of his rating at the time he was discharged, to be paid him quarterly, under the direction of the Commissioner of Pensions; and

application for such pension shall be made to the Secretary of the Navy, who, upon being satisfied that the applicant comes within the provisions of this section, shall certify the same to the Commissioner of Pensions, and such certificate shall be his warrant for making payment as herein authorized.

"Sec. 4757. Every disabled person who has served in the Navy or Marine Corps as an enlisted man or appointed petty officer, or both, for a period not less than 10 years, and not been discharged for misconduct, may apply to the Secretary of the Navy for aid from the surplus income of the naval pension fund; and the Secretary of the Navy is authorized to convene a board of not less than three naval officers, one of whom shall be a surgeon, to examine into the condition of the applicant, and to recommend a suitable amount for his relief, and for a specified time, and upon the approval of such recommendation by the Secretary of the Navy, and a certificate thereof to the Commissioner of Pensions, the amount shall be paid in the same manner as is provided in the preceding section for the payment to persons disabled by long service in the Navy; but no allowance so made shall exceed the rate of a pension for full disability corresponding to the grade of the applicant, nor, if in addition to a pension, exceed one-fourth the rate of such pension."

Appointed petty officers were included by the act of December 23, 1886.

It is held by the Judge-Advocate-General of the Navy that the act of March 2, 1895, (see page 55,)

fixing the minimum rate of invalid pension at $6, does not apply to relief granted under section 4757, above; so that the rate of allowance therein provided may be less than $6 per month.

War of 1812.

The act of February 14, 1871, now embodied in sections 4736, 4737, and 4738, Revised Statutes, provided pension at the rate of $8 per month for all honorably discharged officers and enlisted and drafted men, including militia and volunteers, who served in the Army or Navy not less than 60 days in the War of 1812; and such other officers and soldiers as were personally named in any resolution of Congress for any specific service in that war. A widow claiming under this act must have been married to the person on account of whose service the claim arises, before the treaty of peace, February 17, 1815. All persons claiming under this law were required to prove loyalty to the General Government during the war of the rebellion.

The act of March 9, 1878, is now in force, and provides as follows:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll the names of the surviving officers and enlisted and drafted men, without regard to color, including militia and volunteers of the military and naval service of the United States

who served for 14 days in the war with Great Britain of 1812, or who were in any engagement and were honorably discharged, and the surviving widows of such officers and enlisted and drafted men.

"Sec. 2. That this act shall not apply to any person who is receiving a pension at the rate of $8 per month or more, nor to any person receiving a pension of less than $8 per month, except for the difference between the pension now received (if less than $8 per month) and $8 per month. Pensions under this act shall be at the rate of $8 per month, except as herein provided, and shall be paid to the persons entitled thereto, from and after the passage of this act, for and during their natural lives: Provided, That the pensions to widows provided for in this act shall cease when they shall marry again.

"Sec. 3. That before the name of any person shall be placed upon the pension rolls under this act proof shall be made, under such rules and regulations as the Commissioner of Pensions, with the approval of the Secretary of the Interior, shall prescribe, that the applicant is entitled to a pension under this act; and any person who shall falsely take any oath required to be taken under the provisions of this act shall be guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the rolls the name of any person when it shall appear, by proof satisfactory to him, that such name was put on said rolls by or through false or fraudulent representations, or by mistake as to the right of such person to a pension under this act, The loss or lack of a certificate of discharge shall not deprive the

applicant of the benefit of this act, but other proof of the service performed and of an honorable discharge, if satisfactory, shall be deemed sufficient; and when there is no record evidence of such service and such discharge, the applicant may establish the same by other satisfactory testimony: Provided, That when any person has been granted a land warrant, under any act of Congress, for and on account of service in the said War of 1812, such grant shall be prima facie evidence of his service and honorable discharge, so as to entitle him, if living, or his widow if he be dead, to a pension under this act; but such evidence shall not be conclusive, and may be rebutted by evidence that such land warrant was improperly granted."

The service must have been between June 18, 1812, and February 17, 1815, to be considered as rendered in the "War of 1812." Where there is no record of the person's service, the testimony of persons who served with him is admissible as evidence to show that he served as claimed; but in such cases there must be a record of the organization in which it is claimed the service was rendered. Historical evidence of service is sometimes accepted where no record of the organization alleged is found.

Those who served as sustitutes, and the widows of such, are entitled under both laws. Warriors of the Six Nations who were in the United States service are also entitled. Troops in State service during the war, and not muster-

ed into the United States service, and for whose services the State was not reimbursed by the United States, are not entitled, nor are privateersmen. Troops who served against the Creek Indians during the period of the war are entitled, these Indians being allies of the British.

Widows under this act are entitled whether remarried since the soldiers' death or not, if they have not married again since March 9, 1878. If married again since March 9, 1878, they are entitled to the pension up to the date of such remarriage.

Revolutionary War Widows.

The act of March 9, 1878, above, contained the following provision:

"And provided further, That under this act any widow of a Revulotionary soldier who served for 14 days or was in any engagement shall be placed on the pension-rolls of the United States and receive a pension at the rate of $8 per month."

It is held that remarriage of the widow of a Revolutionary soldier is not a bar if she was a widow at time of application.

Mexican War.

The act of January 29, 1887, provides:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll the names of the surviving officers and enlisted men, including marines, militia

and volunteers, of the military and naval services of the United States, who being duly enlisted, actually served 60 days with the Army or Navy of the United States in Mexico, or on the coasts or frontier thereof, or en route thereto, in the war with that nation, or were actually engaged in a battle in said war, and were honorably discharged, and to such other officers and soldiers and sailors as may have been personally named in any resolution of Congress for any specific service in said war, and the surviving widow of such officers and enlisted men: Provided, That such widows have not remarried: Provided, That every such officer, enlisted man, or widow who is or may become 62 years of age, or who is or may become subject to any disability or dependency equivalent to some cause prescribed or recognized by the pension laws of the United States as a sufficient reason for the allowance of a pension, shall be entitled to the benefits of this act; but it shall not be held to include any person not within the rule of age or disability or dependence herein defined, or who incurred such disability while in any manner voluntarily engaged in or aiding or abetting the late rebellion against the authority of the United States.

"Sec. 2. That pensions under section 1 of this act shall be at the rate of $8 per month, and payable only from and after the passage of this act, for and during the natural lives of the persons entitled thereto, or during the continuance of the disability for which the same shall be granted: Provided, That section 1 of this act shall not apply to any person who is receiving a pension

at the rate of $8 per month or more, nor to any person receiving a pension of less than $8 per month, except for the difference between the pension now received (if less than $8 per month) and $8 per month.

"Sec. 3. That before the name of any person shall be placed on the pension-roll under this act, proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, of the right of the applicant to a pension; and any person who shall falsely and corruptly take any oath required under this act shall be deemed guilty of perjury; and the Secretary of the Interior shall cause to be stricken from the pension-roll the name of any person whenever it shall be made to appear by proof satisfactory to him that such name was put upon such roll through false and fraudulent representations, and that such person is not entitled to a pension under this act. The loss of the certificate of discharge shall not deprive any person of the benefits of this act, but other record evidence of enlistment and service and of an honorable discharge may be deemed sufficient: Provided, That when any person has been granted a land-warrant, under any act of Congress, for and on account of service in the said war with Mexico, such grant shall be prima facie evidence of his service and honorable discharge; but such evidence shall not be conclusive, and may be rebutted by evidence that such land-warrant was improperly granted.

"Sec. 4. That the pension laws now in force which are not inconsistent or in conflict with this act are hereby made a part of this act, so far as they may be applicable thereto.

"Sec. 5. That section 4716 of the Revised Statutes is hereby repealed so far as the same relates to this act or to pensioners under this act.

"Sec. 6. That the provisions of this act shall not apply to any person while under the political disabilities imposed by the 14th amendment to the Constitution of the United States."

Disloyalty during the war of the rebellion is no bar to Mexican War service-pension.

Duration of the Mexican War.

The war is held to have begun April 24, 1846, the commencement of hostilities, and ended May 30, 1848, when the treaty of Guadalupe Hidalgo was ratified at Quaretaro.

Period of Service.

A decision rendered May 7, 1894, holds:

"A soldier who, while with his command en route to Mexico, was taken sick and sent to hospital, from which he was discharged more than 60 days after he started to the seat of war, his command having continued thereto, will be considered as coming within the provisions of the act of January 29, 1887, in so far as the requirement of 60 days' service or that he be en route to Mexico is concerned." (7 P. D., 215.)

A decision rendered June 26, 1897, holds:

"The period of time included in the term 'en route thereto' in the act of January 29, 1887, commences at the date of soldier's enlistment,

when his service in the war with Mexico conforms in other respects with the requirements of the terms of said act, and where the soldier is not responsible or chargeable with delay in finally reaching Mexico, the coasts or frontier thereof." (9 P. D., 44.)

Revenue Marine.

A decision rendered August 2, 1897, (9 P. D., 96,) holds that officers and men of the revenue marine service, co-operating with the Navy in the Mexican War, were embraced in and constituted part of the naval establishment for the time, and as such are equally entitled with officers and men of the Navy.

Powell's Battalion, Missouri Mounted Volunteers.

The act of March 3, 1891, provides:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll the names of all of the honorably discharged surviving officers and enlisted men of Powell's Battalion of Missouri Mounted Volunteers, raised under the act of Congress of May 13, 1846, for service during the war with Mexico; and the names of the surviving widows of such officers and enlisted men, subject to the limitations and regulations of the pension laws of the United States for pensioning the survivors of the war with Mexico."

It is held that pension to survivors and widows of officers and men of this organization can com-

mence only from March 3, 1891, and not from the date of the general Mexican War service-pension act of January 29, 1887. (6 P. D., 149.)

Gray's Battalion, Arkansas Volunteers.

The act of February 5, 1897, provides:

"That the Secretary of the Interior is hereby authorized and directed to place on the pension roll the names of all of the honorably-discharged surviving officers and enlisted men of Gray's Battalion of Arkansas Volunteers, raised under the act of Congress of May 13, 1846, for service during the war with Mexico; and the names of surviving widows of such officers and enlisted men, subject to the limitations and regulations of the pension laws of the United States for pensioning the survivors of the war with Mexico."

Gilpin's Battalion, Missouri Volunteers.

A decision rendered August 18, 1897, (9 P. D., 108,) holds that members of Gilpin's Battalion of Missouri Volunteers are entitled under the general act of January 29, 1887, their service in keeping the Santa Fe route open being regarded as having a necessary connection with the war.

Increase of Mexican War Service Pension.

The act of January 5, 1893, provides:

"That the Secretary of the Interior be, and he is herey, authorized to increase the pension of

every pensioner who is now on the rolls at $8 per month on account of services in the Mexican War, and who is wholly disabled for manual labor, and is in such destitute circumstances that $8 per month are insuffincient to provide him the necessaries of life, to $12 per month."

A decision rendered April 13, 1894, holds:

"The act of January 5, 1893, entitled 'An act granting increase of pension to soldiers of the Mexican War in certain cases,' does not authorize a similar increase to the widow of such a soldier." (7 P. D., 203.)

A decision rendered June 30, 1896, holds:

"The increase of pension provided by the act of January 5, 1893, for survivors of the war with Mexico, is to be granted only to those survivors, otherwise entitled, who, on the 5th of January, 1893, were in receipt of a pension of $8 per month on account of service in the war with Mexico." (8 P. D., 229.)

A decision rendered June 16, 1894, holds:

"The act of January 5, 1893, providing for increase from $8 to $12 per month of pensions on account of service in the Mexican War, does not include pensions granted under the act of March 3, 1891, on account of service in Powell's Battalion, Missouri Mounted Volunteers." (7 P. D., 260.)

Indian Wars, 1832 to 1842.

The act of July 27, 1892, provides:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to place on

the pension-roll the names of the surviving officers and enlisted men, including marines, militia and volunteers of the military and naval service of the United States, who served for 30 days in the Black Hawk War, the Creek War, the Cherokee disturbances, or the Florida War with the Seminole Indians, embracing a period from 1832 to 1842, inclusive, and were honorably discharged, and such other officers, soldiers, and sailors as may have been personally named in any resolution of Congress, for any specific service in said Indian wars, although their term of service may have been less than 30 days.

"And the surviving widows of such officers and enlisted men: Provided, That such widows have not remarried:

"Provided further, That this act shall not apply to any person not a citizen of the United States.

"Sec. 2. That pensions under this act shall be at the rate of $8 per month, and payable from and after the passage of this act, for and during the natural lives of the persons entitled thereto.

"Sec. 3. That before the name of any person shall be placed on the pension-roll under this act, proof shall be made, under such rules and regulations as the Secretary of the Interior may prescribe, of the right of the applicant to a pension.

"And any person who shall falsely and corruptly take any oath required under this act shall be deemed guilty of perjury;

"And the Secretary of the Interior shall cause to be stricken from the pension-roll the name of any person whenever it shall be made to appear by proof satisfactory to him that such name was

put upon such roll through false and fraudulent representations, and that such person is not entitled to a pension under this act.

"The loss of the certificate of discharge shall not deprive any person of the benefits of this act, but other evidence of service performed and of an honorable discharge may be deemed sufficient.

"Sec. 4. That this act shall not apply to any person who is receiving a pension at the rate of $8 per month or more, nor to any person receiving a pension of less than $8 per month, except for the difference between the pension now received (if less than $8 per month) and $8 per month.

"Sec. 5. That the pension laws now in force, which are not inconsistent or in conflict with this act, are hereby made a part of this act, so far as they may be applicable thereto.

"Sec. 6. That section 4716 of the Revised Statutes is hereby repealed, so far as the same relates to this act or to pensioners under this act."

Disloyalty during the war of the rebellion is no bar to pension under this act.

Citizenship.

The act of February 3, 1893, provides:

"That the Commissioner of Pensions be, and he is hereby, authorized and directed to accept as sufficient proof of the citizenship of an applicant for pension under said act of July 27, 1892, the fact that such applicant at the date of the application was an actual and bona fide resident of the United States."

Period of Indian War Service.

A decision rendered March 30, 1894, under the above act, holds:

"Under the provisions of the act of July 27, 1892, period of service commences from the date when a claimant appeared at the place of battalion, regimental, or brigade rendezvous designated in proper orders, and ends at the date when he reached said rendezvous on his return, or (section 47 1, R. S.) the date of individual discharge or the date when the organization to which he belonged was disbanded." (7 P. D., 173.)

A decision rendered October 2, 1894, holds:

"Where the Government has neglected to make or keep any record of a soldier's enlistment, service or discharge, the soldier should be permitted, under section 3 of the act of July 27, 1892, to establish these matters by the best obtainable evidence." (7 P. D., 327.)

Commencement of Florida Indian Wars.

A decision rendered November 17, 1894, holds:

"Congress having accepted November 1, 1835, as the date from which volunteers and militia were entitled to pay for services in the repression of Indian hostilities in Florida, said date may also be accepted as fixing the commencement of the war in adjudicating claims under the act of July 27, 1892." (7 P. D., 382.)

Army Nurses.

The act of August 5, 1892, provides

"That all women employed by the Surgeon-General of the Army as nurses, under contract or otherwise, during the late war of the rebellion, or who were employed as nurses during such period by authority which is recognized by the War Department, and who rendered actual service as nurses in attendance upon the sick of wounded in any regimental, post, camp, or general hospital of the armies of the United States for a period of six months or more, and who were honorably relieved from such service, and who are now or may hereafter be unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of pensioners of the United States and be entitled to receive a pension of $12 per month, and such pension shall commence from the date of the filing of the application in the Pension Office after the passage of this act: Provided, That no person shall receive more than one pension for the same period."

CHAPTER VIII.

SPECIAL ACT PENSIONS.

Rate, Commencement and Duration—Rates Equalized.

Rate, Commencement and Duration.

The act of July 27, 1868, and subsequent enactments, as embodied in section 4720, Revised Statutes, provide:

"Sec. 4720. When the rate, commencement, and duration of a pension allowed by special act are fixed by such act, they shall not be subject to be varied by the provisions and limitations of the general pension law; but when not thus fixed the rate and continuance of the pension shall be subject to variation in accordance with the general laws, and its commencement shall date from the passage of the special act, and the Commissioner of Pensions shall, upon satisfactory evidence that fraud was perpetrated in obtaining such special act, suspend payment thereupon until the propriety of repealing the same can be considered by Congress."

Rates Equalized.

The act of June 6, 1874, amends the above and provides:

"That all persons entitled to pensions under special acts fixing the rate of such pensions, and now receiving or entitled to receive a less pension than that allowed by the general pension laws under like circumstances, are, in lieu of their present rate of pension, hereby declared to be entitled to the benefits and subject to the limitations of the general pension laws, entitled, 'An act to revise, consolidate, and amend the laws relating to pensions,' approved March 3, 1873; and that this act go into effect from and after its passage: Provided, That this act shall not be construed to reduce any pension granted by special act."

CHAPTER IX.

TWO PENSIONS.

The General Rule—Special Acts Not Excepted—Pension Under the Act of June 27, 1890.

The General Rule.

The act of July 14, 1862, and later enactments, as embodied in section 4715, Revised Statutes, provide:

"Sec. 4715. Nothing in this Title [the general pension law] shall be so construed as to allow more than one pension at the same time to the same person or to persons entitled jointly; but any pensioner who shall so elect may surrender his cirtificate, and receive, in lieu thereof, a certificate for any other pension to which he would have been entitled had not the surrendered certificate been issued. But all payments previously made for any period covered by the new certificate shall be deducted from the amount allowed by such certificate."

Special Acts Not Excepted.

The act of July 25, 1882, provides:

"Sec. 5. That no person who is now receiving or shall hereafter receive a pension under a

special act shall be entitled to receive in addition thereto a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law."

Pension Under Act of June 27, 1890.

The act of June 27, 1890, contains the following provision:

"Provided, That persons who are now receiving pensions under existing laws or whose claims are pending in the Pension Office, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this act; and nothing herein contained shall be so construed as to prevent any pensioner thereunder from prosecuting his claim and receiving his pension under any other general or special act: Provided, however, That no person shall receive more than one pension for the same period."

It is held by a decision rendered March 27, 1896, (8 P. D., 118,) that section 4715, Revised Statutes, above, does not apply to pension under the act of 1890, and, therefore, though the pensioner may not retain two pensions for the same period, he may have the benefit of the larger rate whenever for any part of the period covered by both pensions the rate allowed by one is larger than that allowed by the other.

CHAPTER X.

ACCRUED PENSIONS.

Present Law—Reimbursement.

Present Law.

The act of March 2, 1895, repealing all former laws relative to accrued pension, is as follows:

"That from and after the 28th day of September, 1892, the accrued pension to the date of the death of any pensioner, or of any person entitled to a pension having an application therefor pending, and whether a certificate therefor shall issue prior or subsequent to the death of such person, shall, in the case of a person pensioned, or applying for pension, on account of his disabilities or service, be paid, first, to his widow; second, if there is no widow, to his child or children under the age of 16 years at his death; third, in case of a widow, to her minor children under the age of 16 years at her death. Such accrued pension shall not be considered a part of the assets of the estate of such deceased person, nor be liable for the payment of the debts of said estate in any case whatsoever, but shall inure to the sole and exclusive benefit of the widow or children. And if no widow or child survive such pensioner, and in the case of his last surviving child who was such minor at his death, and in case of a

dependent mother, father, sister, or brother, no payment whatsoever of their accrued pension shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of their last sickness and burial, if they did not leave sufficient assets to meet such expense. And the mailing of a pension check, drawn by a pension agent in payment of a pension due, to the address of a pensioner, shall constitute payment in the event of the death of a pensioner subsequent to the execution of the voucher therefor. And all prior laws relating to the payment of accrued pension are hereby repealed."

The date "September 28, 1892," is the date of a decision rendered (6 P. D., 107) materially modifying former views as to who might collect accrued pension. A decision rendered March 27, 1897, says:

"The act of March 2, 1895, may be considered as a legislative construction of [and is substituted for] section 4718, Revised Statutes, intended to take the place of the Departmental construction of September 28, 1892." (8 P. D., 494.)

A decision rendered February 5, 1897, holds:

"The act of March 2, 1895, was intended to govern the allowance and payment of accrued pension in all claims of deceased applicants adjudicated subsequent to September 28, 1892, without regard to whether the applicant died before or after that date." (8 P. D., 439.)

Reimbursement.

In practice it is held that the act of March 2, 1895, above, makes provision for the collection of reimbursement for expenses of last illness and burial from the accrued pension of all pensioners and pension claimants.

The extent of the "reimbursement" will be limited to the amount of the accrued pension, or to the actual disbursement if less than the amount of the accrued pension. It has been held that a town is not entitled to reimbursement; and that only one person can make claim for reimbursement in any case. In case of an insane pensioner, reimbursement can be had, even though the pension had not been drawn for more than three years preceding death.

The last "sickness," within the contemplation of the law, is the immediate attack which ends in death; but if the attack be not acute, it will be regarded as commencing at the time when the condition of the pensioner, or pension applicant, became such as to require the regular aid and attendance of another person.

CHAPTER XI

INCREASE AND RE-RATING.

Straight Increase—Increase on Additional Disability—Deat'n

Straight Increase.

An invalid pension for disabilities not specific, (i. e., those for which no special rate is fixed by law,) can be increased in rating whenever the disability increases in such a degree as to warrant it. Most diseases are progressive, tending to become worse. Other diseases are often developed as sequels of disease or injury for which pension is drawn; as, rheumatism resulting in heart disease, etc. Then, too, in cases of inguinal hernia it sometimes happens that the breach becomes so extensive that a truss no longer affords any relief, and there is almost total disability as a result.

In all such cases an increase of pension is due.

As the rate of pension can generally be increased only by the filing of a formal application, it devolves upon pensioners to secure to themselves and their families all to which the law and the degree of their disablement entitle them.

As the highest limit of rating of invalid pension under the act of June 27, 1890 is $12 per month,

invalid pensioners drawing under that law cannot go above $12, except by proving disability of service origin entitling them to a rating greater than $12 under the general law. If previously pensioned under the general law and subsequently under the act of June 27, 1890, an invalid pensioner's title to more than $12 under the general law can be determined by a straight-increase claim.

An invalid pensioner drawing $17 under the general law cannot go higher unless (1) the "total rate of the rank in which he is entitled to be recognized under the general pension law is higher, or (2) unless from pensioned disability alone or with additional disability proven of service origin he can show an aggregate disablement of service origin entitling him to one of the "grade" ratings (see "Grade Ratings"), or (3) unless he has proved disability of service origin for which a special rating in excess of $17 is provided.

Increase on Additional Disability.

Many persons applying for invalid pension think they can claim on only one wound, or injury, or disease; and thus, or for other reasons, omit to set forth in their application other causes of disability on account of which they are equally as well entitled to pension. With a few exceptions, where the person comes under some special rating, pension can be had for disability arising

from all the several wounds, injuries and diseases which were incurred in service.

Pensioners under the general law having disabilities for which they have received no rating should not neglect to obtain a proper adjustment of the matter; for, in determining the rate of pension under the general law, no notice advantageous to the pensioner can be taken of disability arising from causes on account of which no pension is claimed. Rights as regards additional pension, as in the case of straight increase of pension, can be determined without interference with the regular drawing of the pension already granted.

Re-rating.

Former ratings are not disturbed unless there be manifest error in the rate, involving violation of law or an indisputable injustice to the pensioner. It sometimes happens that in cases of wound or injury, the disability from which is permanent in degree, the original allowance is made at too low a rate. In these cases an increase and re-rating can generally be had even though there has been no apparent increase of disability; but rarely in cases simply of disease under the general law.

CHAPTER XII.

RESTORATION OF PENSIONS.

Default—Civil Service—1812 and Indian Wars—Abandonment of Children—Adulterous Cohabitation—Adverse Evidence—Non-resident Aliens—Dropped Without Notice.

Default.

Various enactments as embodied in section 4719, Revised Statutes, provide:

"Sec. 4719. The failure of any pensioner to claim his pension for three years after the same shall have become due shall be deemed presumptive evidence that such pension has legally terminated by reason of the pensioner's death, remarriage, recovery from the disability, or otherwise, and the pensioner's name shall be stricken from the list of pensioners, subject to the right of restoration to the same on a new application by the pensioner, or, if the pensioner is dead, by the widow or minor children entitled to receive the accrued pension, accompanied by evidence satisfactorily accounting for the failure to claim such pension, and by medical evidence in cases of invalids who were not exempt from biennial examinations as to the continuance of the disability."

Civil Service.

The act of March 1, 1879, provides—

"That all persons who under and by virtue of the first section of the act entitled 'An act supplementary to the several acts relating to pensions,' approved March 3, 1865, were deprived of their pensions during any portion of the time from the 3d of March, 1865, to the 6th of June, 1866, by reason of their being in the civil service of the United States, shall be paid their said pensions, withheld by virtue of said section of the act aforesaid, for and during the said period of time from the 3d of March, 1865, to the 6th of June, 1866."

1812 and Indian Wars.

The act of March 9, 1878, (the last 1812 War service-pension law) provides:

"Sec. 5. That the Secretary of the Interior be, and he is hereby, authorized and directed to restore to the pension-rolls the names of all persons now surviving heretofore pensioned on account of service in the War of 1812 against Great Britain or for service in any of the Indian wars, and whose names were stricken from the rolls in pursuance of the act entitled 'An act authorizing the Secretary of the Interior to strike from the pension-rolls the names of such persons as have taken up arms against the Government or who have in any manner encouraged the rebels,' approved February 4, 1862; and that the joint resolution entitled 'Joint resolution prohibiting pay-

ment by any officer of the Government to any person not known to have been opposed to the rebellion and in favor of its suppression,' approved March 2, 1867, and section 4716 of the Revised Statutes of the United States, shall not apply to the persons provided for by this act: Provided, That no money shall be paid to any one on account of pensions for the time during which his name remained stricken from the rolls.

"Sec. 6. That the surviving widow of any pensioner of the War of 1812, where the name of said pensioner was stricken from the pension-rolls in pursuance of the act entitled 'An act authorizing the Secretary of the Interior to strike from the pension-rolls the names of such persons as have taken up arms against the Government or who have in any manner encouraged the rebels,' approved February 4, 1862, and where, under the existing provisions of law, said pensioner died without his name being restored to the rolls, shall be entitled to make claim for a pension as such widow after the passage of this act: Provided, That no such arrearages shall be paid for any period prior to the time of the removal of the disability of the pensioner, as provided in section five."

Irrespective of the above law, if the charged or presumed disloyalty were erroneous and loyalty to the Government could be shown, the pensioner could, during his or her lifetime, obtain restoration of the pension from date of last payment.

It will be observed that this act has no applica-

tion to Mexican War pensioners who were dropped, and who must still prove loyalty in order to be restored to the rolls, unless applying under the service-pension act of January 29, 1887. (See "Service Pensions.")

Abandonment of Children.

A widow, pensioned as such and deprived of her pension because of being adjudged to be an unsuitable person to have the custody of her children, or because of her abandonment of them, becomes entitled to restoration from the date the children become 16, unless she be living in "open and notorious adulterous cohabitation."

Adulterous Cohabitation.

If, under the former interpretation of the act of August 7, 1882, she was deprived of her pension because of alleged "open and notorious adulterous cohabitation," she can be restored to the rolls when it is clearly proven that the alleged "cohabitation" ceased before August 7, 1882, or that the charge made against her is utterly erroneous.

Adverse Evidence.

Pensioners are sometimes erroneously dropped because of the adverse report of a board of examining surgeons or of a special examiner of the Pension Bureau, but in all such cases the pension can be restored upon a proper showing of the facts.

Non-Resident Aliens.

In the pension appropriation act of March 1, 1893, was the following provision:

"That from and after July 1, 1893, no pension shall be paid to a non-resident who is not a citizen of the United States, except for actual disabilities incurred in the service."

The above was repealed by the following provision in the pension appropriation act of March 2, 1895:

"That so much of the fourth proviso of an act entitled 'An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June 30, 1894, and for other purposes,' approved March 1, 1893, which reads as follows: 'That from and after July 1, 1893, no pension shall be paid to a nonresident who is not a citizen of the United States, except for actual disabilities incurred in the service,' be and the same is hereby repealed."

All non-resident aliens who were dropped from the pension-roll under the act of 1893, above, are entitled to restoration under the act of 1895, above.

Dropped Without Notice.

In the case of an invalid pensioner under the act of June 27, 1890, dropped on the "revision" of the roll, in September, 1895, on the ground of no pensionable degree of disability under the act, a decision rendered June 29, 1897, holds:

"As the evidence tends to show that claimant failed to receive notice of the proposed dropping from the rolls and to appear for a medical examination, the action dropping his name from the rolls is reversed and the case remanded for further adjudication, that claimant may have an opportunity to file rebutting evidence and to be examined." (9 P. D., 50.)

CHAPTER XIII.

ARREARS OF PENSION.

Service Before March 4, 1861—Service Since March 4, 1861—Arrears Under Act of June 27, 1890—Rate of Arrears—Naval Service Pensions, Act of 1867—Special Act Pensions—Commencement of Straight Increase.

Service Before March 4, 1861.

Various enactments, the latest that of March 3, 1873, are embodied in section 4713, Revised Statutes, as follows:

"Sec. 4713. In all cases in which the cause of disability or death originated in the service prior to the 4th day of March, 1861, and an application for pension shall not have been filed within three years from the discharge or death of the person on whose account the claim is made, or within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing by the party prosecuting the claim the last paper requisite to establish the same. But no claim allowed prior to the 6th day of June, 1866, shall be affected by anything herein contained."

The above has no reference to claims or pensions under the service-pension acts.

Pensions granted under the acts of February 14, 1871, March 9, 1878, January 29, 1887, and July 27, 1892, commence from the dates of the respective acts under which the pension is claimed, without regard to the time of filing of the application. Those granted under the act of January 29, 1887, will commence from the date of the applicant becoming 62 years of age, if that age be not attained until subsequent to the date of the act, and the claim be not especially based on disability or dependence.

Service Since March 4, 1861.

A provision of the act of July 14, 1862, and of later laws, is embodied in section 4709, Revised Statutes, as follows:

"Sec. 4709. All pensions which have been, or which may hereafter be, granted in consequence of death occurring from a cause which originated in the service since the 4th day of March, 1861, or in consequence of wounds or injuries received or disease contracted since that date, shall commence from the death or discharge of the person on whose account the claim has been, or is hereafter, granted, or from the termination of the right of party having prior title to such pension; provided the application for such pension has been or is hereafter filed with the Commissioner of Pensions within five years after the right thereto

has accrued; otherwise the pension shall commence from the date of filing the last evidence necessary to establish the same. But the limitation herein prescribed shall not apply to claims by or in behalf of insane persons and children under 16 years."

The act of January 25, 1879, taking out from under the foregoing statute all pension cases arising from disability or death-cause incurred in service and line of duty during the war of the rebellion, provided as follows:

"That all pensions which have been granted under the general laws regulating pensions, or may hereafter be granted, in consequence of death from a cause which originated in the United States service during the continuance of the late war of the rebellion, or in consequence of wounds, injuries, or disease received or contracted in said service during said war of the rebellion, shall commence from the date of the death or discharge from said service of the person on whose account the claim has been or shall hereafter be granted, or from the termination of the right of the party having prior title to such pension: Provided, The rate of pension for the intervening time for which arrears of pension are hereby granted shall be the same per month for which the pension was originally granted.

"Sec. 2. That the Commissioner of Pensions is hereby authorized and directed to adopt such rules and regulations for the payment of the arrears of pensions hereby granted as will be necessary to cause to be paid to such pensioner, or,

if the pensioner shall have died, to the person or persons entitled to the same, all such arrears of pension as the pensioner may be, or would have been, entitled to under this act."

The act of March 3, 1879, as follows, repealed section 4709, Revised Statutes, above, and amended the act of January 25, 1879, in that it extended its provisions as to the date of commencement to all pensions arising from service subsequent to the termination of the war of the rebellion; and it further provided that if in cases of pension arising from service at any time subsequent to March 4, 1861, the application therefor be filed after June 30, 1880, the pension shall commence from the date of filing of the application:

"That section 1 of the act of January 25, 1879, granting arrears of pensions, shall be construed to extend to and include pensions on account of soldiers who were enlisted or drafted for the service in the war of the rebellion, but died or incurred disability from a cause originating after the cessation of hostilities, and before being mustered out: Provided, That in no case shall arrears of pensions be allowed and paid from a time prior to the date of actual disability.

"Sec. 2. All pensions which have been, or which may hereafter be, granted in consequence of death occurring from a cause which originated in the service since the 4th day of March, 1861, or in consequence of wounds or injuries received

or disease contracted since that date, shall commence from the death or discharge of the person on whose account the claim has been or is hereafter granted, if the disability occurred prior to discharge; and if such disability occurred after the discharge, then from the date of actual disability, or from the termination of the right of party having prior title to such pension: Provided, The application for such pension has been or is hereafter filed with the Commissioner of Pensions prior to the 1st day of July, 1880, otherwise the pension shall commence from the date of filing the application; but the limitation herein prescribed shall not apply to claims by or in behalf of insane persons and children under 16 years of age.

"Sec. 3. Section 4709 of the Revised Statutes is hereby repealed."

The limitation in the act of March 3, 1879, does not apply to claims for restoration or renewal of pension, nor to claims by or in behalf of children who were under the age of 16 at the date of death of the person on account of whose service and death the claim arises. In claims by or in behalf of insane persons, the limitation does not apply if it appear that during the entire period from March 3, 1879, to July 1, 1880, the applicant was insane and incapable of properly conducting his affairs.

The pension appropriation act of June 7, 1888, contains the following provision:

"That all pensions which have been, or which

may hereafter be, granted under the general laws regulating pensions to widows in consequence of death occurring from a cause which originated in the service since the 4th day of March, 1861, shall commence from the date of death of the husband."

Until this act widows of persons dying from causes originating in service subsequent to March 4, 1861, could not receive the arrears of pension to the date of remarriage, unless they had filed application therefor before July 1, 1880, or before remarriage.

Under the existing law, if application were filed before July 1, 1880, the general-law pension of the dependent mother of a person dying from causes originating in service since March 4, 1861, commences from the date of death of the person on account of whose service and death the claim arises; that of a dependent father from the date of death of the mother, or from the date of death of the son if the title of the mother were terminated by death or otherwise before the death of the son. The pension of dependent brothers and sisters commences from the date of death of the father, or of the mother if the father died previously, or from the date of the brother's death, if the death of the father and mother occurred, or their title was otherwise terminated, previous to the death of the brother.

Arrears Under Act of June 27, 1890.

The act of June 27, 1890, provides that all pensions granted thereunder, including those of dependent parents, shall commence from the date of filing of the application under the act in the Pension Bureau. As to invalid pension under the act the law provides:

"Sec. 2. * * and such pension shall commence from the date of the filing of the application in the Pension Office, after the passage of this act, upon proof that the disability then existed, and shall continue during the existence of the same."

In the pension appropriation act of March 6, 1896, appears the following provision:

"That whenever a claim for pension under the act of June 27, 1890, has been, or shall hereafter be, rejected, suspended, or dismissed, and a new application shall have been, or shall hereafter be, filed, and a pension has been, or shall hereafter be, allowed in such claim, such pension shall date from the time of filing the first application, provided the evidence in the case shall show a pensionable disability to have existed, or to exist, at the time of filing such first application, anything in any law or ruling of the Department to the contrary notwithstanding."

The "ruling of the Department" referred to is a decision rendered August 18, 1893, which held:

"If an application be filed under the second

section [of the act of June 27, 1890], and it cannot be shown that a pensionable disability existed at the date of filing, but such a disability is shown to have existed subsequently, then before pension can be allowed for said disability a new declaration must be filed." (7 P. D., 12.)

In practice under this holding, if in a claim for invalid pension under the act of June 27, 1890, the medical examination had was not, in the view of the Pension Bureau, favorable to the claim, the claim was rejected, and as in but comparatively rare instances would any other evidence be regarded as sufficient to disprove the report of the medical examination, or outweigh the view taken of the medical examination by the Pension Bureau, the filing of a new application became, in general, the only practical method of securing the reopening of the claim; and if subsequently allowed, the pension was made to commence from the date of filing of the second application.

The above decision was based on the clause in section 2 (relative to invalid pensions) of the act of 1890 that pension thereunder should commence "from the date of the filing of the application in the Pension Office, * * upon proof that the disability then existed," and it was held that in the absence of a favorable medical examination there was no "proof" that the disability existed at date of filing the claim.

The act of March 6, 1896, as above, was intended to correct the practice of the Pension Bureau and secure the allowance of the pension from the date of filing the claim—that is, the first application. But a decision rendered June 17, 1896, declares:

"The act relates solely to the commencement of pensions under the second section of the act of June 27, 1890, and is restricted in its application to a particular class of cases, viz, those in which the first application filed has been or shall hereafter be 'rejected, suspended, or dismissed,' and subsequently a new application has been or shall be filed and pension allowed."

And, again, that—

"A careful examination of these rulings in connection with the act of March 6, 1896, will show that the only cases in which it modifies the former practices are those in which the claim was rejected on account of some defect in the original application or declaration." (8 P. D., 152.)

The act of 1896 relates to the rejection of a claim as to its merits and not the rejection of an application, the setting out of the claim, for some informality not affecting the merits of the claim.

Notwithstanding the obvious error of the construction placed upon the act of 1896, above, the decision of June 17, 1896, above, still stands and the official practice substantially unchanged. In some instances a readjustment of the commence-

ment of invalid pension granted under the act of 1890 can now be had under the act of 1896, and on proper construction of the law a larger number will be benefited.

Rate of Arrears.

The act of March 3, 1879, provides:

"That the rate at which the arrears of invalid pensions shall be allowed and computed in the cases which have been or shall hereafter be allowed, shall be graded according to the degree of the pensioner's disability from time to time, and the provisions of the pension laws in force over the period for which the arrears shall be computed."

Naval Service Pensions, Act of 1867.

Pensions granted under the act of March 2, 1867, commenced from the date of the act until July 13, 1869, when by decision of the Chief of the Bureau of Equipment and Recruiting, Navy Department, pensions for less than 20 years' service were made to commence from the date of the report of the Board of Survey. On April 28, 1870, the Secretary of the Navy ruled that all pensions granted under the act should commence from the date of his approval of the claim. Finally, on June 4, 1875, the Secretary ruled that the pensions should commence from the date of filing of the application in the Navy Department, and such continues to be the practice at the present time. (See "Service Pensions.")

Special Act Pensions.

Pensions granted by special act of Congress commence from the date of their becoming law, which is the date of their approval by the President, or of their becoming law without his approval.

Commencement of Straight Increase.

The act of March 3, 1873, contained a provision which, as embodied in section 4698½, Revised Statutes, is as follows:

"Sec. [4698½.] Except in cases of permanent specific disabilities, no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same, made under the pending claim for increase, and in this, as well as all other cases, the certificate of an examining surgeon, or of a board of examining surgeons, shall be subject to the approval of the Commissioner of Pensions."

In case of "permanent specific disabilities," as above, increase commences only from the date of a law increasing the specified rate.

CHAPTER XIV.

WITHHOLDING OF PENSION

The Act of December 21, 1893—Reduction—Erroneous Payment.

The Act of December 21, 1893.

The act of December 21, 1893, contains the following provision:

"Provided, That any pension heretofore or that may hereafter be granted to any applicant therefor under any law of the United States authorizing the granting and payment of pensions, on application made and adjudicated upon, shall be deemed and held by all officers of the United States to be a vested right in the grantee to that extent that payment thereof shall not be withheld or suspended until, after due notice to the grantee of not less than 30 days, the Commissioner of Pensions, after hearing all the evidence, shall decide to annul, vacate, modify, and set aside the decision upon which such pension was granted. Such notice to grantee must contain a full and true statement of any charges or allegations upon which such decision granting such pension shall be sought to be in any manner disturbed or modified."

A decision rendered June 16, 1894, holds:

"The act of December 21, 1893, has no application to a case where suspension and resumption of payment had been accomplished prior to its passage." (7 P. D., 562.)

A decision rendered February 23, 1895, holds:

"The act of December 21, 1893, has no application to cases where a reduction of the pension was made to conform to the decision of the Bureau of Pensions, and to correct a clerical error, the pension certificate showing a higher rate of pension than that originally approved by the Commissioner." (7 P. D., 488.)

A decision rendered May 9, 1895, holds:

"The act of December 21, 1893, relieves the Commissioner of Pensions of the power, theretofore exercised, of suspending the payment of a pension pending the proceeding to annul or reduce it, leaving the pension to accrue during that period, and to the pensioner the right to demand and receive payment at the times fixed for payments under the law. But when the decision of the Commissioner of Pensions is rendered, the effect thereof under the act of December 21, 1893, is to authorize a withdrawal of payment not only as to such illegal part which, but for the decision, might thereafter have accrued, but as to all unpaid pension adjudged illegal under that decision." (7 P. D., 569.)

Reduction.

A decision rendered August 22, 1896, holds:

"Pension having been reduced from $12 to $8 per month, without a medical examination being held for more than three years, it is held that the action was error, and claim should be reopened, and pensioner be allowed the benefit of another medical examination." (8 P. D., 349.)

Erroneous Payment.

A decision rendered February 8, 1896, holds:

"The Government cannot withhold the pension granted under the act of June 27, 1890, to reimburse itself for moneys erroneously paid as pension under the general law when such pension was not procured through fraud or mistake, but was allowed as the result of an erroneous judgment on the evidence. (8 P. D., 71.)

CHAPTER XV.

ADMINISTRATION OF PENSION LAWS.

Department of the Interior—Board of Pension Appeals—Commissioner of Pensions—Deputy Commissioners of Pensions. Medical Referee—Salaries in the Pension Bureau—Signing of Commissioner's Name—Inspection of Pension Agencies and Examining Boards—Printed Instructions and Forms—Investigation of Pension Cases—Special Cases—Examination of Papers.

Department of the Interior.

Previous to the act of March 2, 1833, which provided for the appointment of a "Commissioner of Pensions," charged with the duty of executing, "under the direction of the Secretary of War, such duties in relation to the various pension laws as may be prescribed by the President of the United States," the military pension laws were administered by a Bureau of the War Department; the naval pension laws being administered by the Navy Department, and the service-pension laws of 1828 and 1832 relative to the Revolutionary War being administered by the Treasury Department.

The act of March 3, 1849, creating the Department of the Interior, provides (section 437, R. S.):

"Sec. 437. There shall be at the seat of Government an Executive Department, to be known as the Department of the Interior, and a Secretary of the Interior, who shall be the head thereof"

In accordance with the act of March 3, 1849, section 441, Revised Statutes, provides:

"Sec. 441. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects: * * Fourth. Pensions and bounty-lands."

The "Pension Office" accordingly became a part of the Department of the Interior, and considers and adjudicates all pension claims save those under the law providing service-pension for 10 and 20 years' service in the Navy. (See "Service Pension.")

Board of Pension Appeals.

The pension appropriation act of July 7, 1884, contained the first distinct provision for the consideration of appeals from the decision of the Pension Bureau in pension cases; providing for "three members of a Board of Pension Appeals, to be appointed by the Secretary of the Interior, at $2,000 each." The Board has numbered as high as 12 members, and now numbers nine.

By the pension appropriation act of July 31, 1886, the officer of the Interior Department formerly designated as "Assistant Secretary" was thereafter to be designated "First Assistant Secretary"; provision being made for the appointment of an additional officer to be designated "Assistant Secretary." The duties of the new "Assistant Secretary" have mainly been to supervise the work of the Board of Pension Appeals.

Commissioner of Pensions.

Section 470, Revised Statutes, as amended by the act of March 3, 1881, provides:

"There shall be in the Department of the Interior a Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to receive a salary of $5,000 a year."

Section 471, Revised Statutes, provides:

"The Commissioner of Pensions shall perform, under the direction of the Secretary of the Interior, such duties in the execution of the various pension and bounty-land laws as may be prescribed by the President."

Deputy Commissioners of Pensions.

Section 472, Revised Statutes, as amended by the acts of March 3, 1881, and August 5, 1882, provides:

"There shall be in the Department of the Interior a First Deputy Commissioner of Pensions and a Second Deputy Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall be charged with such duties in the Pension Bureau as may be prescribed by the Secretary of the Interior or may be required by law; and in case of death, resignation, absence, or sickness of the Commissioner his duties shall devolve upon the First Deputy Commissioner until his successor is appointed or such absence or sick-

ness ceases, and in case of like absence of the Commissioner and First Deputy Commissioner the Second Deputy Commissioner shall act as Commissioner in like manner."

Medical Referee.

Section 4776, Revised Statutes, provides:

"The Secretary of the Interior is authorized to appoint a duly qualified surgeon as medical referee, who, under the control and direction of the Commissioner of Pensions, shall have charge of the examination and revision of the reports of examining surgeons, and such other duties touching medical and surgical questions in the Pension Office as the interests of the service may demand."

Salaries in the Pension Bureau.

The provision of law as to the number and salaries of officers and employees of the Pension Bureau is substantially as follows:

The Commissioner of Pensions, $5,000; First Deputy Commissioner, $3,600; Second Deputy Commissioner, $3,600; chief clerk, $2,250; assistant chief clerk, $2,000; medical referee, $3,000; assistant medical referee, $2,250; two qualified surgeons, who shall be experts in their profession, at 2,000 each; 38 medical examiners, who shall be surgeons of education, skill, and experience in their profession, at $1,800 each; 10 chiefs of divisions, at $2,000 each; law clerk, $2,000; 58 principal examiners, at $2,000 each; 20 assistant

with the approval of the Secretary of the Interior, to appoint a person to sign the name of the Commissioner to certificates or warrants for bounty lands, and certificates or warrants so signed shall be as valid as if signed by the Commissioner."

Inspection of Pension Agencies and F ing Boards.

The act of August 8, 1882, amending 4766, Revised Statutes, provides:

"The Commissioner of Pensions may, when in his judgment it shall be deemed necessary or proper, visit in person, for the purpose of examination and inspection, or may send any one or more of the officers of his Bureau for that purpose, any of the pension agencies or medical examining boards or surgeons; and the necessary and actual expenses of such visits shall be paid by the Secretary of the Interior, upon properly executed vouchers, out of the contingent fund of said Bureau."

Printed Instructions and Forms.

Section 4748, Revised Statutes, provides:

"The Commissioner of Pensions, on application being made to him in person or by letter by any claimant or applicant for pension, bounty land, or other allowance required by law to be adjusted or paid by the Pension Office, shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing and obtaining such claim

and on the issuing of a certificate of pension or of a bounty-land warrant he shall forthwith notify the claimant or applicant, and also the agent or attorney in the case, if there be one, that such certificate has been issued or allowance made, and the date and amount thereof."

Investigation of Pension Cases

As shown above, provision is made for the appointment of a number of "special examiners," for the investigation of pension claims by personal interviews with claimants and their witnesses.

Whenever it is determined by the Pension Bureau that the facts in a pension case warrant its special examination, as to its merits, the claimant and his attorney are so notified by the Bureau. When the Special Examiner of the Bureau is ready to take up the case for investigation, he notifies the claimant as to the time when and the place where said examination will be commenced. At the time mentioned in the notice sent to the claimant, the Special Examiner will call upon the claimant and take his or her deposition bearing on all of the facts in the claim. In making this deposition it is important that the claimant should give the Special Examiner the names and, if possible, the postoffice addresses, of all persons, such as doctors, comrades, or neighbors, or others, who can probably give important testimony in support of the claim, including those who have not already testified in the case. The Special Examiner will call upon the persons who have already testified in the case,

and have them testify again, before him, as to their knowledge of the facts in the claim; and he will also call upon the other persons whose names and addresses the claimant may furnish him as being able to testify, and take depositions from them. The claimant has the privilege of being present in person, or by attorney, and cross-examining all the witnesses who may be called upon to testify during the investigation of the case.

In the investigation of criminal offenses growing out of violations of the pension laws, it is not customary for the Pension Bureau, or the Special Examiner, to notify either the claimant or his attorney of the purpose and scope of the investigation.

Special Cases.

Under an order of the Commissioner of Pensions, pension claims will not be taken up out of their regular order and made "Special" except when evidence is furnished showing that the claimants are sick and in immediate danger of death; or are in destitute circumstances.

It will not be sufficient to show that a claimant is in "needy or destitute circumstances." The claimant's actual condition, both physical and financial, must be shown, fully and definitely, so as to enable the Pension Bureau to determine whether or not the claimant is, as a matter of fact, in such needy or destitute circumstances as to warrant the claim being made "Special"

Examination of Papers.

All affidavits or other evidence filed in a pension case by or for the claimant may be examined at the Pension Bureau by the claimant or the authorized attorney. Within certain restrictions the same privilege extends to reports of medical examinations.

Evidence obtained on special examination, official evidence relative to the soldier's or sailor's service, and all information regarded as "confidential," as, reports as to the reputation of witnesses, are withheld, and may not be examined.

CHAPTER XVI.

RULES OF PRACTICE.

Appeals Before the Secretary of the Interior—Appeals Before the Commissioner of Pensions—Rules of Practice Before the Commissioner of Pensions.

Appeals Before the Secretary of the Interior.

RULE 1.

An appeal will lie to the Secretary of the Interior from the final action or order of the Commissioner of Pensions in all cases relating to pensions or bounty lands, and each claim so appealed must be accompanied with its separate appeal and specification of the errors alleged therein.

RULE 2.

The appeal must be filed with the Secretary and point out, specifically, mistake or error of fact or law in the decision, judgment, or order complained of; and no appeal will be entertained which fails to meet the requirements of this rule.

RULE 3.

New and material evidence relative to the grounds of rejection, filed subsequent to the action or order from which the appeal is taken, will not be considered by the Secretary until the same has first been passed upon by the Bureau of Pensions.

RULE 4.

An appeal from the action of the Bureau of Pensions refusing to recognize a power of attorney or to pay a fee to appellant, should be based upon the reasons assigned by said Bureau for its action, and should set forth the grounds of the complaint, referring to the rules of practice by which it is believed the complaint is sustained.

RULE 5.

An appeal taken on behalf of a claimant, by or through a suspended or disbarred attorney, will not be entertained.

RULE 6.

Motions for review of departmental decisions, except where questions of fee are involved (for which other rules are provided), will be allowed in the discretion of the Secretary, and the requirements of Rules 1, 2, 3, and 5 as to appeals are hereby made strictly applicable to motions for review.

RULE 7.

No appeal pertaining to the allowance of fee, where refundment has been called for, will be entertained, unless refundment, as required, shall have been made.

RULE 8.

No claim the rejection whereof has been affirmed by the Secretary shall be reopened without his approval. To that end, whenever new and material evidence shall have been filed, the case may, on the report of the Commissioner, with his opinion, be again submitted to the Secretary for action.

RULE 9.

From and after September 1, 1893, more than one motion for reconsideration of a decision adverse to a claim for a fee, or to a refundment of the same, or for recognition in a pension case, will not be entertained by the Department of the Interior.

The motion which is allowed must be signed by the person propounding it, with his oath or affirmation accompanying, that it is not intended for delay, but because he firmly believes injustice has been done; which oath shall be taken before an officer authorized to administer the same for general purposes.

Said motion must be based on (1) material error in law or fact, or (2) after-discovered evidence. If the first, the error must be specifically alleged, and authorities cited, or reason given to establish the existence thereof. If the second, the motion must allege that due diligence failed to disclose the existence of such evidence prior to the former decision of the question by the Department, and said evidence must accompany the motion.

A second motion for reconsideration, and all motions which fail to comply with the requirements of this rule, will be transmitted to the Commissioner of Pensions, that the law division of his office may return them with proper explanations to the persons propounding them.

Appeals Before the Commissioner of Pensions.

RULE 1.

An appeal by an attorney will not be entertained unless he has filed a duly executed power of attorney for this purpose from the claimant, or is entitled under the rules to recognition.

RULE 2.

Upon reference to the Bureau of Pensions of an appeal, that Bureau will ascertain whether the appeal has been taken in conformity with the rules of the Department, and if it should be found that it has not been so taken that fact should be reported to this Department, whereupon the appeal will be dismissed by the Secretary, and the claimant or his attorney will be advised by the Bureau of Pensions of this action and the reasons therefor.

RULE 3.

All additional evidence filed, with a view to the reopening of a rejected pension claim, must be filed in the Bureau of Pensions

RULE 4.

An appeal in a pension claim will not be entertained until the applicant has filed all attainable evidence and obtained the decision of the Bureau of Pensions thereon.

RULE 5.

When an appeal to the Secretary of the Interior from the rejection of a claim for pension is filed and upon examination of the case at the Bureau

of Pensions it is found that the claim should be opened for further action, the Department must be informed of that fact and the appeal will be dismissed by the Secretary.

RULE 6.

If, upon the issue of a certificate of pension, the applicant claims that error exists as to the rate of his pension, he should present the facts to the Bureau of Pensions, and an appeal will not be entertained in such cases until after adverse action thereon has been taken by said Bureau.

RULE 7.

A report upon an appeal involving a medical question must be accompanied by an opinion of the Medical Referee thereon.

RULE 8.

An appeal from the action of the Bureau of Pensions refusing to recognize a power of attorney, or to pay a fee to appellant, should be based upon the reasons assigned by that Bureau for its action, and should set forth the grounds of the complaint, referring to the rules of practice by which it is believed the complaint is sustained.

RULE 9

When final action has been taken by the Bureau of Pensions rejecting any pension claim, notice of such action, with a brief statement of the grounds for such rejection, shall at once be given by the Commissioner of Pensions to the claimant or the attorney of record

RULE 10.

Claimants for pension shall be considered as having been duly notified of the action of the Bureau of Pensions in any claim where the notice required shall have been mailed to the address of the claimant or that of the attorney of record.

RULE 11.

The filing of an appeal in any case shall operate to suspend action in the Bureau of Pensions until the appeal has been disposed of, or other order made, by the Secretary. Except, where a claim is filed under the act of June 27, 1890, and an appeal is pending before the Secretary upon a claim under the general law, all papers will be returned to the Commissioner that the new claim may be adjudicated, after which the same will be retransmitted to the Secretary that the appeal may be decided.

Rules of Practice Before the Commissioner of Pensions.

Note.—The following rules have been in force since January 1, 1890.

RULE 1.

A person appearing of record in this office as having complied with the requirements of the regulations prescribed by the Secretary of the Interior for the recognition of attorneys or agents for claimants before the Department of the Interior will be held authorized to prosecute any claim for pension on filing a power of attorney from the claimant.

RULE 2.

The written consent of a claimant is declared essential to a valid assignment of an attorney-ship or agency from one attorney or agent to another; and the assignee shall file in each and every claim covered by the assignment the consent herein provided for, as well as a schedule of all claims assigned, which schedule shall set out the name of claimant, regiment, company, number of claim, and the character thereof.

RULE 3.

No attorney or agent shall have power to make a valid assignment of any claim in which he has been recognized for the purpose of prosecuting the same, even with the written consent of claimant, except he be at the time of such assignment and of the consent, in good standing as a practitioner before this office.

RULE 4.

No power of attorney purporting to be executed by a claimant will be recognized as a good and valid authority unless the same be signed in the presence of two witnesses and acknowledged before an officer duly authorized to administer oaths for general purposes, whose official character is certified under seal

RULE 5.

No fee contracts filed under the act of July 4, 1884, will be recognized as valid, or payment of fees made thereunder, unless the signature of claimant to the contract is witnessed by two attesting witnesses, and claimant's acknowledgment

thereto is before some officer duly authorized to administer oaths for general purposes, whose official signature must be certified under seal. (Commissioner's ruling in re Beller, October 21, 1885.)

RULE 6.

Articles of agreement in claims for bounty land will be filed in duplicate, and when the claim shall have been allowed, and the bounty-land warrant issued, one approved copy of said agreement will be forwarded to the attorney of record and the other preserved with the record of the claim. The bounty-land warrant will be forwarded direct to the party entitled to the possession thereof.

RULE 7.

When an attorney or agent is disbarred, pending the adjudication of a claim, and, while such disbarment is in force, the claim is adjudicated and the certificate issued, and by reason of such disbarment no fee is certified, and thereafter said attorney or agent is restored to practice, and claimant has not by reason of such disbarment canceled or revoked the authority theretofore existing, upon such restoration as aforesaid the lawful fee will be certified and paid to him.

RULE 8.

When a claimant, pending the disbarment of his attorney of record, employs another attorney, who prosecutes the claim to final adjudication, no fee will be certified the disbarred attorney upon his restoration to practice, but his disbarment will operate as an estoppel to bar any claim for fee.

RULE 9.

A fee will not be allowed to a guardian who prosecutes the claim of his ward, nor to a firm of attorneys of which the guardian is a member.

RULE 10.

When an attorney or agent is called upon by this office to furnish evidence in any claim he will be allowed 90 days to furnish such evidence or give reasons why he fails to do so: Provided, always, That before such attorney is dropped or another attorney recognized at any time within one year, he shall be given 30 days' notice to show cause why he is not guilty of laches.

In the event that such answer be not filed within 30 days from the mailing of such notice, or if the said answer to said notice shall be held by the Commissioner to be insufficient, claimant will be notified of such failure, either to file the evidence called for or show cause why it is not filed, and may file the same, either himself or by such other attorney as he may elect; and upon the recognition of such other attorney the former attorney or agent will be estopped from claiming any fee.

RULE 11.

To call up a case will not per se be held a substantial compliance with any specific requirement of this office. (Commissioner's ruling in re George L. Waggoner, October 19, 1885.)

RULE 12.

Attorneys will be required to execute due diligence in all cases in which they are recognized

as attorneys of record. Neglect to prosecute a claim for one year will be held, in default of cause shown therefor, conclusive evidence of abandonment of a claim by an attorney, and claimant will be so informed. (Commissioner's ruling in re George L. Waggoner, October 19, 1885.)

RULE 13.

Upon the rejection of a claim for pension, or bounty land, the duly constituted attorney of record shall be notified of such rejection and the reason therefor, and shall be allowed 90 days from the date of such notice in which to file a motion for reconsideration sustained by material evidence, or to enter an appeal to the Secretary of the Interior, in default of which he shall be held to have abandoned the case, and the claimant may employ any other duly qualified attorney to further prosecute the claim.

RULE 14.

No claims pending in this Bureau will be considered out of the regular order of business upon the request of attorneys or agents, or any other persons whomsoever, except for good cause shows and upon the order of the Commissioner of Pensions.

RULE 15.

From and after the 1st day of January, A. D. 1886, all pension agents where claimants allege payment by them of any sum or sums to their attorney of record shall request said claimants to make affidavit to the amount of payment, the date of payment, under what certificate made, and, as far as may be in their recollection,

how such payment was made; and that the said affidavit shall be in manner and form substantially as provided by order No. 124, under date of December 3, 1885.

RULE 16.

Each and every affidavit shall be executed in duplicate, one to be retained by the pension agent as his voucher and authority in the premises for deducting the amount sworn to have been paid, and the duplicate thereof to be promptly forwarded to the Commissioner of Pensions for filing with the record in the claim wherein such affidavit purports to be made.

RULE 17.

Where claimant cannot make such affidavit as is herein prescribed and set forth, with reasonable certainty, the pension agent shall pay the fee certified by the Commissioner of Pensions or called for by the fee agreements without deduction: Provided, That if, in the opinion of the pension agent, reasonable doubt exists as to the fact of said payment and yet the said claimant be unable to make such affidavit as herein prescribed, said agent shall certify said case to the Commissioner of Pensions for his consideration and decision. (See Sec. 4784, R. S.)

RULE 18.

Every attorney, agent, or other person recognized by this Department as entitled to practice before it, or before the Commissioner of Pensions in prosecuting claims for pensions, shall cause

to be filed with the Commissioner of Pensions, not less than 10 days before the same are issued for general circulation, copies of all circular letters intended and framed to solicit business before the Commissioner of Pensions. And if at the end of 10 days from filing the same such circular letters are not disapproved, and notice thereof furnished the person filing the same, they shall be held prima facie to be in manner and form approved.

RULE 19.

Claims for increase of pension shall not be considered or held as claims pending within the prohibition of section 190, Revised Statutes of the United States. (Secretary's decision on the appeal of Luther Harrison, October 6, 1885; Commissioner's ruling in re Deloss E. Topping, November 20, 1885.)

RULE 20.

Appeals by attorneys or agents to the Secretary of the Interior in pension and bounty-land cases will not be considered unless the Commissioner of Pensions has taken final action upon the question to which they relate. Such appeals must be addressed to the Secretary of the Interior, and must set forth the specific errors of law or of fact upon which they are based. Appeals which do not conform to the above requirements will be dismissed as informal.

RULE 21.

All rules and orders inconsistent with the foregoing are hereby abrogated.

CHAPTER XVII.

ORGANIZATION OF THE PENSION BUREAU.

Chief Clerk—Medical Division—Law Division—Board of Review—Special Examination Division—The Adjudicating Divisions—Old War and Navy Division—Eastern Division—Middle Division—Western Division—Southern Division—Record Division—Certificate Division—Finance Division—Mail Division—Army and Navy Survivors Division.

Chief Clerk.

The Chief Clerk is charged, in general, with the general supervision of the business of the Bureau and the assignment of its clerical and other force. He is also charged with the duty of seeing that proper discipline is maintained and that the business of the Bureau is conducted in an orderly and businesslike manner. He keeps a record of the time of each employee of the Bureau, and supervises and certifies all applications for leave of absence; examines and approves all requisitions upon the Interior Department for miscellaneous supplies, and signs all requisitions for stationery; has general supervision of all of the mail that does not require the personal signature of the Commissioner; promulgates and keeps on file all orders of the Commissioner and of the Secretary of the Interior.

Medical Division.

The Medical Division is charged, in general, with the duty of the examination and revision of the reports of examining surgeons, and such other duties touching medical and surgical questions as the interest of the service may require, including the determining of the rate of pension that should be allowed in invalid cases. The Medical Referee is in charge of this Division.

Law Division.

The Law Division, under the direction of the Law Clerk, is charged with the following duties:

"The determination of all questions of law or practice referred by the Commissioner of Pensions, the Deputy Commissioners, the chief clerk, or chiefs of divisions;

"The preparation and transmission to the special examination division of cases for criminal investigation; all work connected with criminal and civil suits after preliminary investigation by the special examination division; the preparation of letters for the guidance of special examiners relative to further investigation in such matters, and the keeping of a proper docket and records relative thereto;

"The transmission of cases to Congress and the keeping of a record of special acts passed;

"Answering calls for evidence made by the different Departments of the Government, and which is filed in the different claims for pension;

"Mimeographing synopses of decisions rendered

by the honorable Secretary of the Interior the synopsis of decision being in each case furnished by the Board of review;

"The return of marriage certificates, upon request, to the person found entitled to their possession;

"The preparation and transmission to the adjudicating divisions of the Bureau generally of notices of disbarments, deaths, and changes of address of attorneys and agents, and transfers of rights of one attorney or agent to another of their attorneyship interest in claims;

"All correspondence with the law officers of the Government relative to matters arising out of trials connected with claims for pension;

"The discipline of attorneys and agents practicing before the Bureau, and the custody of the personal files of such attorneys and agents;

"The review of circulars submitted by attorneys and agents under rule 18 of the Rules of Practice;

"The consideration of transfers of attorneyship from one agent or attorney to another, and correspondence relative thereto;

"The promulgation of all orders and rulings of the Commissioner of Pensions;

"The consideration of questions relating to erroneous payment of fees, and securing refundment of fees when upon examination it is found that they have been wrongfully paid;

"Answering miscellaneous correspondence referred for consideration."

Board of Review.

The Board of Review is charged, in general, with the duty of last consideration of all classes

of pension and bounty-land claims as to their merits, before allowance or rejection, after the same have been considered by the adjudicating divisions.

It is also charged with the duty of giving consideration to all questions of contest as to attorneys' fees.

Special Examination Division.

The Special Examination Division is charged, in general, with the duty of making special examination into the merits of pension and bounty-land claims, whether pending or allowed. It is also charged with the duty of investigating suspected attempt at fraud on the Government, through and by virtue of the provisions of the pension laws, and to aid in prosecuting any person so offending.

The Adjudicating Divisions.

There are five such divisions, namely: Old War and Navy, Eastern, Middle, Western, and Southern.

Each division is charged, in general, with the duty of calling for and considering, in the first instance, all evidence, including reports from the various Executive Departments, necessary to complete the requirements of the Bureau in pension and bounty-land claims.

It is also charged with the duty of considering all attorneyship contests prior to issue of certificate.

Old War and Navy Division.

The Old War and Navy Division gives consideration to claims arising out of services, as follows:

"Old Wars (all prior to 1861, including Mexican War, act of January 29, 1887), Navy, bounty land, 1812 service pensions, Regular Army, veteran reserve corps, veteran volunteers (Hancock's corps,) United States volunteers (recruits from Confederate regiments), provost-marshal's department, generals and staff officers of volunteers, Mississippi marine brigade, ram fleet, gunboat flotilla, and miscellaneous United States organizations and officers."

Eastern Division

The Eastern Division gives consideration to claims arising out of service in volunteer organizations of the late war from the following States: New England States, New York, New Jersey, and Delaware

Middle Division.

The Middle Division gives consideration to claims arising out of service in volunteer organizations of the late war from the following States: Pennsylvania, Ohio, and Michigan.

Western Division.

The Western Division gives consideration to claims arising out of service in volunteer organi-

zations of the late war from the following States and Territories: Indiana, Illinois, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Nebraska, Colorado, Nevada, California, Oregan, Wyoming, Idaho, Montana, Washington, and all the Territories.

Southern Division.

The Southern Division gives consideration to claims arising out of services in volunteer organizations of the late war from the following States, including the United States colored troops: District of Columbia, Maryland, Virginia, West Virginia, Kentucky, Tennessee, Missouri, Arkansas, North Carolina, South Carolina, Florida, Georgia, Alabama, Mississippi, Louisiana, and Texas.

Record Division.

The Record Division is charged, in general, with the duty of keeping a record, both numerically and alphabetically, of all applications for pension and bounty-land received, and of distributing the same to the proper adjudicating division. It also notifies claimants and attorneys of the receipt and numbers of original claims.

It is also charged with the duty of making proper record of all attorneys who are admitted to practice, and makes proper entry of all executing officers, such as notaries public, justices of the peace, etc., noting the dates of commencement

and expiration of their commissions. It also examines and passes upon, in the first instance, all applicants, contracts for fee, powers of attorney, certificates of official character of executing officers, etc., as to formality in execution.

Certificate Division.

The Certificate Division is charged, in general, with the duty of preparing and distributing to the *proper* pension pay-agencies, pension certificates and other necessary papers in all allowed claims, whether for original pension, for restoration, increase, re-issue, accrued, duplicate, etc. It is also charged with the duty of adjudicating all claims for duplicate of lost certificates; also attends to the transferring of names of pensioners from the roll of one agency to another upon the change of the residence of the pensioner; also attends to the issuing of "permits", upon which to draw pension money when pension certificates are either lost or mislaid.

Finance Division.

The Finance Division is charged, in general, with the consideration of all matters pertaining to the financial affairs of the Bureau.

Stationery Division.

The Stationery Division is charged, in general, with the duty of supplying the officials of the

Bureau, and also the United States pension pay-agencies, and the examining surgeons, with the necessary stationery, and keeping a proper record of same.

Mail Division.

The Mail Division is charged, in general, with the duty of looking after all incoming and outgoing mail, and of stamping incoming mail on the date of the receipt of each application, affidavit, letter, or other communication or package of whatever nature.

This Division also attends to the sorting a distribution of all mail matter to the vario other divisions of the Bureau.

Army and Navy Survivors Division.

The Army and Navy Survivors Division is charged with the duty of obtaining the names and postoffice addresses of officers and comrades of the different military organizations, also of the Navy and Marine Corps, also of surgeons of the United States Army and contract surgeons who were in charge of, or on duty in, the general, post, or field hospitals throughout the loyal States during the war, or with batteries of light artillery and other independent commands, also of Union ex-prisoners of war.

The records of this division are kept upon service cards, giving name, late rank, company,

regiment, dates of enlistment and discharge, and present postoffice address, and are filled by company, regiment, State, and arm of service. These cards are constantly renewed and corrected by correspondence with comrades and postmasters to learn of any changes in postoffice addresses.

Claimants and their recognized attorneys are, upon application, furnished with the names and postoffice addresses of officers and other comrades to aid in the prosecution of pension claims.

CHAPTER XVIII.

PAYMENT OF PENSIONS.

Appointment of Pension Agents—Temporary Provision for Vacancies—Clerk to Sign Pension Agent's Name—Establishment of Pension Agencies—Salary, Clerk Hire, and Expenses—Time and Manner of Payment—Printed Forms for Vouchers—Indians, Foreigners, and Persons Insane or Imprisoned—Inmates of National Home for Disabled Volunteer Soldiers—Inmates of the Government Hospital for the Insane—Navy Pensioner Admitted to Navy Hospital—Inmetes of the Soldiers' Home at Washington, D. C.—Duplicate of Check When Lost or Destroyed—United States Pension Agencies and Their Districts.

Appointment of Pension Agents.

Section 4778, Revised Statutes, provides:

"The President is authorized to appoint, by and with the advice and consent of the Senate, all pension agents, who shall hold their respective offices for the term of four years, unless sooner removed or suspended, as provided by law, and until their successors are appointed and qualified."

Section 4779, Revised Statutes, provides:

"All pension agents shall give bond with good and sufficient sureties, for such amount and in such form as the Secretary of the Interior may approve."

Pension agents above referred to are not pension attorneys, but agents of the Commissioner of Pensions for the payment of pensions.

Temporary Provision for Vacancies.

The act of March 8, 1878, provides:

"Whenever during a session of the Senate a vacancy shall occur in the office of pension agent by reason of resignation, death, removal, or expiration of the term of office, or where any such agent lawfully appointed shall have failed to qualify and assume the duties of such office, the President may, when the public exigency requires it, designate any officer of the United States to perform the duties of such office, but such designation shall not be for a longer time than 20 days, and such officer so designated shall give bonds, if required by the President, for the faithful discharge of the said duties, and the Secretary of the Interior shall allow in the settlement of the accounts of such officer the necessary expenses incurred by him in the discharge of his duties under this section. The foregoing provisions shall apply to any vacancy now existing."

Clerk to Sign Pension Agent's Name.

The act of June 30, 1890, as modified by the act of July 18, 1894, provides:

"In case of sickness or unavoidable absence of any pension agent from his office he may, with the approval of the Secretary of the Interior,

authorize the chief clerk, or some other clerk employed therein, to act in his place, to sign official checks, and to discharge all the other duties required by law of such pension agent; and any pension agent may designate and authorize a clerk to sign the name of the pension agent to official checks; but the appointment of the clerk to sign official checks, * * * shall be made by the pension agent without other or further approval. The official bond given by the principal of the office shall be held to cover and apply to the acts of the person appointed to act in his place in such cases. * * * Such acting officer shall, moreover, for the time being, be subject to all the liabilities and penalties prescribed by law for the official misconduct, in like cases, of the pension agent for whom he acts."

Establishment of Pension Agencies.

Section 4780, Revised Statutes, provides:

"The President is authorized to establish agencies for the payment of pensions wherever, in his judgment, the public interests and the convenience of the pensioners require; but the number of pension agencies in any State or Territory shall in no case be increased hereafter so as to exceed three, and no such agency shall be established in addition to those now existing in any State or Territory in which the whole amount of pensions paid during the fiscal year next preceding shall not have exceeded the sum of $500,000."

Salary, Clerk Hire, and Expenses.

The act of March 3, 1885, provides:

"From and after June 13, 1885, the salary and emoluments of agents for the payment of pensions shall be $4,000, and no more, per annum."

The act of March 3, 1891, provides:

"That the amount of clerk hire at each agency shall be apportioned as nearly as practicable in proportion to the number of pensioners paid at each agency, and the salaries paid shall be subject to the approval of the Secretary of the Interior."

The act of June 30, 1890, provides:

"The Secretary of the Treasury, where practicable, shall cause suitable rooms to be set apart in the public buildings under his control in the cities where pension agencies are located, which shall be acceptable to the Secretary of the Interior, for the use and occupancy of the said agencies, respectively."

Time and Manner of Payment.

The act of March 3, 1891, provides:

"The Secretary of the Interior is hereby authorized and directed to arrange the various agencies for the payment of pensions in three groups, as he may think proper, and may, from time to time, change any agency from one group to another, as he may deem convenient for the transaction of the public business. The first group shall make their quarterly payments of pensions on January 4, April 4, July 4, and October 4 of each year;

the second group shall make their quarterly payments of pensions on February 4, May 4, August 4, and November 4 of each year; and the third group shall make their quarterly payments of pensions on March 4, June 4, September 4, and December 4 of each year. The Secretary of the Interior is hereby fully authorized to cause payments of pensions to be made for the fractional parts of quarters created by the change from former methods of paying pensions, so as to properly adjust all payments as herein provided."

Section 4764, Revised Statutes, as amended by the act of March 3, 1891, is substantially as follows:

Within 15 days immediately preceding the fourth day of each month in which quarterly payment of pensions is to be made at the several agencies as hereinbefore provided for, each agent for the payment of pensions shall prepare a quarterly voucher for every person whose pension is payable at his agency, and transmit the same by mail, directed to the address of the pensioner named in such voucher, who, on or after the date on which the payment of such quarterly pension is herein authorized to be made, may execute and return the same to the agency at which it was prepared and at which the pension of such person is due and payable.

Section 4765, Revised Statutes, provides:

"Upon the receipt of such voucher, properly executed, and the identity of the pensioner being established and proved in the manner pre-

he shall cause a note to be printed, informing pensioners of the fact that hereafter [after July 8, 1870,] no pension will be paid except upon the vouchers issued as herein directed."

Indians, Foreigners, and Persons Insane or Imprisoned.

Section 4766, Revised Statutes, as amended by the act of August 8, 1882, provides:

"Hereafter no pension shall be paid to any person other than the pensioner entitled thereto, nor otherwise than according to the provisions of this Title; and no warrant, power of attorney, or other paper executed or purporting to be executed by any pensioner to any attorney, claim agent, broker, or other person shall be recognized by any agent for the payment of pensions, nor shall any pension be paid thereon; but the payment to persons laboring under legal disabilities may be made to the guardians of such persons in the manner herein prescribed; and pensions payable to persons in foreign countries may be made according to the provisions of existing laws: Provided, That in case of an insane invalid pensioner having no guardian, but having a wife or children dependent upon him (the wife being a woman of good character), the Commissioner of Pensions is hereby authorized, in his discretion, to cause the pension to be paid to the wife, upon her properly executed voucher, or in case there is no wife, to the guardian of the children, upon the properly executed voucher of such guardian, and in like manner to cause the pension of invalid pensioners, who are or may hereafter be

imprisoned as punishment for offenses against the laws, to be paid, while so imprisoned, to their wives or the guardians of their children.

"And pensions to Indian pensioners residing in the Indian Territory may be paid in person by the pension agent, upon a suitable voucher, at some convenient point in said Territory, which, together with the form and manner of identification of the pensioners, may be prescribed by the Secretary of the Interior; such payments to be made in standard silver at least once in each current year. And payments in person shall be made to the pensioner in cash by the pension agent whenever in the discretion of the Commissioner of Pensions such personal payment shall be by him deemed necessary or proper to secure to the pensioner his rights." * * *

Inmates of National Home for Disabled Volunteer Soldiers.

The act of February 26, 1881, as amended by the act of August 7, 1882, provides substantially as follows:

All pensions and arrears of pension payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers, shall be paid to the treasurer or treasurers of said Home, upon security given to the satisfaction of the managers, to be disbursed for the benefit of the pensioners without deduction for fines or penalties under regulations to be established by the managers of the Home; said payment to be made by the pension agent upon a certificate of the proper officer of the Home that the pensioner is an inmate thereof and is still liv-

ing. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him; and in case of his death at the Home, the same shall be paid to the widow or children, or in default of either, to his legal representatives.

Inmates of the Government Hospital for the Insane.

The act of August 7, 1882, provides substantially as follows:

If any inmate of the Government Hospital for the Insane who has been admitted according to law from the National Home for Disabled Volunteer Soldiers is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or in part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital and be paid over to the proper officer of said institution for the general uses thereof.

Navy Pensioner Admitted to Navy Hospital.

Section 4813, Revised Statutes, provides:

"Whenever any navy officer, seaman or marine, entitled to a pension, is admitted to a navy hospital, the pension during his continuance in the hospital shall be paid to the Secretary of the Navy and deducted from the account of such pensioner."

Inmates of the Soldiers' Home at Washington, D. C.

The act of March 3, 1883, provides:

"That any inmate of the Home who is receiving a pension from the Government, and who has a child, wife, or parent living, shall be entitled, by filing with the pension agent from whom he receives his money a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all who now are or shall hereafter become inmates of the Home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The Board of Commissioners may from time to time pay over to any inmate such part of his pension money as they think best for his interest and consistent with the discipline and good order of the Home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the Home. In case of the death of any pensioner, any pension money due him and remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years, otherwise the same shall escheat to the Home."

Duplicate of Check When Lost or Destroyed.

Section 3646, Revised Statutes, as amended by the act of February 16, 1885, is substantially as follows:

Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of $2,500.

United States Pension Agencies and Their Districts.

Augusta, Maine: Quarterly payments March 4, June 4, September 4, and December 4.

Pays all pensioners residing in the State of Maine, excepting the Navy pensioners, who are paid at the Boston agency.

Boston, Massachusetts: Quarterly payments March 4, June 4, September 4, and December 4.

Pays all pensioners, Army and Navy, residing in the States of Massachusetts, Connecticut and Rhode Island, including the Navy pensioners residing in the States of Maine, New Hampshire, and Vermont.

Buffalo, New York: Quarterly payments January 4, April 4, July 4, and October 4.

Pays all pensioners residing in the Counties in the State of New York of Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Cortland, Erie, Franklin, Fulton, Genesee, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, St. Lawrence, Schoharie, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, and Yates, excepting the Navy pensioners, who are paid at the New York City agency.

Chicago, Illinois: Quarterly payments January 4, April 4, July 4, and October 4.

Pays all pensioners, Army and Navy, residing in the State of Illinois, including the Navy pensioners residing in the States of Ohio, Iowa, Nebraska, Michigan, Indiana, Kentucky, Wisconsin, Minnesota, North Dakota, South Dakota, Missouri, Kansas; the Territories of New Mexico, Oklahoma, and the Indian Territory.

Columbus, Ohio: Quarterly payments March 4, June 4, September 4, and December 4.

Pays all pensioners residing in the State of Ohio, excepting the Navy pensioners, who are paid at the Chicago agency.

Concord, New Hampshire: Quarterly payments January 4, April 4, July 4, and October 4.

Pays all pensioners residing in the States of New Hampshire and Vermont, excepting the Navy pensioners, who are paid at the Boston agency.

Des Moines, Iowa: Quarterly payments January 4, April 4, July 4, and October 4.

Pays all pensioners residing in the States of Iowa and Nebraska, excepting the Navy pensioners, who are paid at the Chicago agency.

Detroit, Michigan: Quarterly payments March 4, June 4, September 4, and December 4.

Pays all pensioners residing in the State of Michigan, excepting the Navy pensioners, who are paid at the Chicago agency.

Indianapolis, Indiana: Quarterly payments February 4, May 4, August 4, and November 4.

Pays all pensioners residing in the State of Indiana, excepting the Navy pensioners, who are paid at the Chicago agency.

Knoxville, Tennessee: Quarterly payments February 4, May 4, August 4, and November 4.

Pays all pensioners residing in the States of Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas, excepting the Navy pensioners, who are paid at the Washington agency.

Louisville, Kentucky: Quarterly payments February 4, May 4, August 4, and November 4.

Pays all pensioners residing in the State of Kentucky, excepting the Navy pensioners, who are paid at the Chicago agency.

Milwaukee, Wisconsin: Quarterly payments January 4, April 4, July 4, and October 4.

Pays all pensioners residing in the States of Wisconsin, Minnesota, North Dakota, and South Dakota, excepting the Navy pensioners, who are paid at the Chicago agency.

New York City, New York: Quarterly payments February 4, May 4, August 4, and November 4.

Pays all pensioners, Army and Navy, residing in the Counties in the State of New York of Albany, Clinton, Columbia, Delaware, Dutchess, Essex, Greene, Kings, Queens, New York, Orange, Putnam, Richmond, Rensselaer, Rockland, Saratoga, Schenectady, Sullivan, Suffolk, Ulster, Warren, Washington, and Westchester, including all pensioners, Army and Navy, residing in the Counties of New Jersey of Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren.

Philadelphia, Pennsylvania: Quarterly payments February 4, May 4, August 4, and November 4.

Pays all pensioners, Army and Navy, residing in the Counties in the State of Pennsylvania of Berks, Bradford, Bucks, Carbon, Chester, Columbia, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Montour, Northampton, Northumberland, Philadelphia, Pike, Schuylkill, Sullivan, Susquehanna, Wayne, Wyoming, York, including all pensioners, Army and Navy, residing in the Counties of New Jersey of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Ocean, and Salem.

Pittsburg, Pennsylvania: Quarterly payments January 4, April 4, July 4, and October 4.

Pays all pensioners residing in the Counties in the State of Pennsylvania of Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Cumberland, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Lycoming, McKean, Mercer, Mifflin, Perry, Potter, Sny-

der, Somerset, Tioga, Union, Venango, Warren, Washington, Westmoreland, excepting the Navy pensioners, who are paid at the Philadelphia agency.

San Francisco, California: Quarterly payments March 4, June 4, September 4, and December 4.

Pays all pensioners, Army and Navy, residing in the States of California, Nevada, Oregon, Idaho, Montana, Washington, and Wyoming, including those residing in the Territories of Alaska, Arizona, and Utah.

Topeka, Kansas: Quarterly payments February 4, May 4, August 4, and November 4.

Pays all pensioners residing in the States of Kansas, Missouri, and Colorado, including the Territories of New Mexico, Oklahoma and the Indian Territory, excepting the Navy pensioners, who are paid at the Chicago agency.

Washington, D. C.: Quarterly payments March 4, June 4, September 4, and December 4.

Pays all pensioners, Army and Navy, residing in the District of Columbia and the States of Delaware, Virginia, Maryland, and West Virginia, and all those residing in all foreign countries, including the Navy pensioners residing in the States of Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas.

CHAPTER XIX.

MEDICAL EXAMINATIONS.

Examining Surgeons—Inspection of Report—Examination at Home—Examination by Civil Surgeons—Claimants' Rights as to Examination—Special Medical Examination—Biennial Examinations Abolished.

Examining Surgeons.

The act of July 25, 1882, provides:

"The Commissioner of Pensions is hereby authorized to appoint surgeons who, under his control and direction, shall make such examination of pensioners and claimants for pension or increased pension as he shall require; and he shall organize boards of surgeons, to consist of three members each, at such points in each State as he shall deem necessary, and all examinations, so far as practicable, shall be made by the boards, and no examination shall be made by one surgeon, excepting under such circumstances as make it impracticable for a claimant to present himself before a board: Provided, That the Commissioner may, when in his opinion the exigencies of the service require it, organize a board of three surgeons, who, under his direction, shall review the work of any regularly appointed board or surgeon: Provided further, That all examinations shall be thorough and searching, and the

certificate contain a full description of the physical condition of the claimant at the time, which shall include all the physical and rational signs and a statement of all structural changes.

"The Commissioner may, when in his judgment the degree of disability cannot be determined truthfully or satisfactorily excepting by expert examination, employ an expert, not a regularly appointed surgeon, to make the examination; and the fee for such examination shall be $5: Provided, That the fee for an expert examination shall not be paid to any regularly appointed examining surgeon.

"The fee for the examination of claimants who reside out of the United States shall not exceed $10, which shall be paid, upon the presentation of satisfactory vouchers, out of the appropriation for the payment of the examining surgeons, and through the United States consulate nearest to the claimant's place of residence."

The act of March 6, 1896, provides:

"Each member of each examining board shall, as now authorized by law, receive the sum of $2 for the examination of each applicant whenever five or a less number shall be examined on any one day, and one dollar for the examination of each additional applicant on such day: Provided, That if 20 or more applicants appear on one day, no fewer than 20 shall, if practicable, be examined on said day, and that if fewer examinations be then made, 20 or more having appeared, then there shall be paid for the first examinations made on the next examination day the fee of $1 only until 20 examinations shall

have been made: Provided further, That no fee shall be paid to any member of an examining board unless personally present and assisting in the examination of applicant: Provided, That the report of such examining surgeons shall specifically state the rating which in their judgment the applicant is entitled to."

Inspection of Report.

The act of July 18, 1894, provides:

"That the report of such examining surgeons when filed in the Pension Office shall be open to the examination and inspection of the claimant or his attorney, under such reasonable rules and regulations as the Secretary of the Interior may provide.'

Examination at Home.

The act of July 25, 1882, provides:

"When a claimant is so disabled as not to be able to present himself to a board of surgeons for examination, the Commissioner may order a surgeon to make the examination at the claimant's residence; and the fee for such examination shall be $2, in addition to the payment of the actual traveling expenses of the surgeon."

Examination by Civil Surgeons

If there is no board of surgeons, or duly appointed single surgeon, within 100 miles of the residence of a claimant, an order for examination may be secured before a physician in the

immediate vicinity if the facts are shown to the Commissioner of Pensions. This is under the authority of section 4777, Revised Statutes, which provides:

"The Commissioner of Pensions is empowered to appoint, at his discretion, civil surgeons to * * * examine applicants for pension where he deems an examination by a surgeon appointed by him necessary; and the fee for such examinations, and the requisite certificates thereof, in duplicate, shall be $2, which shall be paid by the agent for paying pensions in the district within which the pensioner or claimant resides, out of any money appropriated for the payment of pensions, under such regulations as the Commissioner of Pensions may prescribe."

Claimants' Rights as to Examination.

In addition to having the right to examination at his home if physically unable to report to the nearest board or single surgeon, and not being obliged to travel a long distance to be examined, a pension claimant is not obliged to report to any board or single surgeon through whom he has reason to believe he cannot obtain justice.

Nor is he obliged to report for examination within the time specified in the order sent him. If, however, he fails to report within the time specified, he cannot be examined without obtaining a new order, which may be had on a proper showing.

A decision redered June 30, 1896, holds:

"1. Whenever a claimant shall have been ordered, and appears before a board of examin-

ing surgeons for examination, all the members o such board shall participate in such examination, and no certificate from such board will be accepted which fails to show this fact, save only in cases where a claimant on appearing, and finding a less number of surgeons than the full board present, shall consent, in writing on such certificate, to be examined by the members of said board then present.

"2. The secretary of the board shall certify on the back of the certificate the names of all the members of the board who were present and participating in such examination, and when a full board have participated in the exmination, the certificate of the secretary of the board will suffice; but in case a full board is not present the applicant may refuse to be examined, and appear at a later day before a full board.

"3. These rules shall take effect only from the 1st day of October, 1896, and are not intended to disturb cases heretofore adjudicated, in good faith, according to the practice heretofore existing in the Bureau of Pensions." (8 P. D., 165.)

Special Medical Examination.

Section 4775, Revised Statutes, provides:

"Examining surgeons duly appointed by the Commissioner of Pensions, and such other qualified surgeons as may be employed in the Pension Office, may be required by him, from time to time, as he deems for the interests of the Government, to make special examinations of pensioners or applicants for pension, and such examinations shall have precedence over previous ex-

aminations, whether special or biennial; but when injustice is alleged to have been done by an examination so ordered the Commissioner of Pensions may, at his discretion, select a board of three duly appointed examining surgeons who shall meet at a place to be designated by him, and shall review such cases as may be ordered before them on appeal from any special examination, and the decision of such board shall be final on the question so submitted thereto, provided the Commissioner approve the same. The compensation of each of such surgeons shall be $3, and shall be paid out of any appropriations made for the payment of pensions, in the same manner as the ordinary fees of appointed surgeons are or may be authorized to be paid."

Biennial Examinations Abolished.

The act of June 21, 1879, provides:

"Sections 4771, 4772, and 4773 of the Revised Statutes of the United States, providing for biennial examinations of pensioners, are hereby repealed: Provided, That the Commissioner of Pensions shall have the same power as heretofore to order special examinations, whenever, in his judgment, the same may be necessary, and to increase or reduce the pension according to right and justice; but in no case shall a pension be withdrawn or reduced except upon notice to the pensioner and a hearing upon sworn testimony, except as to the certificate of the examining surgeon."

CHAPTER XX.

OATHS AND EXECUTION OF PAPERS.

Declaration and Other Papers—Indian Claims—Detailed Clerks May Administer Oaths—Special Examiners May Administer Oaths—Subpœnas for Witnesses—Process to Enforce Subpœna—Oaths Before Notary or Commissioner—Oaths Administered Free—Fourth-Class Postmasters.

Declarations and Other Papers.

The act of July 26, 1892, provides:

"That declarations of pension claimants shall be made before a court of record or before some officer thereof having custody of its seal, or before some officer who, under the laws of his State, city, or county, has authority to administer oaths for general purposes; and said officers are hereby fully authorized and empowered to administer and certify any oath or affirmation relating to any pension or application therefor: Provided, That where such declaration or other papers are executed before an officer authorized as above, but not required by the laws of his State to have and use a seal to authenticate his official acts, he shall file in the Pension Bureau a certificate of his official character, showing his official signature and term of office, certified by a clerk of a

court of record, or other proper officer of the State, as to the genuineness thereof; and when said certificate has been filed in the Bureau of Pensions his own certificate will be recognized during his term of office.

"That the Commissioner of Pensions may accept declarations and other papers of claimants residing in foreign countries, made before a United States minister or consul or other consular officer, or before some officer of the country duly authorized to administer oaths for general purposes, and whose official character and signature shall be duly authenticated by the certificate of a United States minister or consul or other consular officer; and declarations in claims of Indians may be made before a United States Indian agent.

"That any and all declarations or affidavits now on file in the Pension Bureau which are considered informal by reason of not having been executed in conformity to the laws heretofore in force covering such, and in which it is shown or may be hereafter shown by proper evidence that the same were executed by and before an officer who was duly authorized to administer oaths for general purposes at said date of execution, shall be accepted as formal as from the date of filing such declarations or affidavits.

"That all acts and parts of acts inconsistent with the provisions of this section are hereby repealed."

Indian Claims.

Section 4721, Revised Statutes, provides substantially as follows:

All proof which has heretofore been taken before an Indian agent, or before an officer of any tribe, competent according to the rules of said tribe to administer oaths, is held and regarded by the Pension Office, in the examining and determining of claims of Indians now on file, as of the same validity as if taken before an officer recognized by the law at the time as competent to administer oaths; all proof wanting in said claims hereafter, as well as in those filed after the 3d day of March, 1873, shall be taken before the agent of the tribe to which the claimants, respectively, belong; in regard to dates, all applications of Indians now on file shall be treated as though they were made before a competent officer at their respective dates, and if found to be in all other respects conclusive, they shall be allowed; and Indians shall be exempted from the obligation to take the oath to support the Constitution of the United States.

Detailed Clerks May Administer Oath.

Section 4744, Revised Statutes, as amended by the act of July 25, 1882, is substantially as follows:

The Commissioner of Pensions is authorized to detail from time to time clerks or persons employed in his office to make special examinations into the merits of such pension or bounty-land claims, whether pending or adjudicated, as he may deem proper, and to aid in the prosecution of any party appearing on such examinations to be guilty of fraud, either in the presentation or in procuring the allowance of such claims; and any person so detailed shall have power to administer

oaths and take affidavits and depositions in the course of such examinations, and to orally examine witnesses, and may employ a stenographer, when deemed necessary by the Commissioner of Pensions, in important cases, such stenographer to be paid by such clerk or person, and the amount so paid to be allowed in his accounts.

Special Examiners May Administer Oath.

The act of March 3, 1891, provides:

"That the same power to administer oaths and take affidavits which, by virtue of section 4744 of the Revised Statutes is conferred upon clerks detailed by the Commissioner of Pensions from his office to investigate suspected attempts at fraud on the Government through and by virtue of the pension laws, and to aid in prosecuting any person so offending, shall be, and is hereby, extended to all special examiners or additional special examiners employed under authority of Congress to aid in the same purpose."

Subpœnas for Witnesses.

The act of July 25, 1882, provides:

"Any judge or clerk of any court of the United States in any State, District, or Territory shall have power, upon the application of the Commissioner of Pensions, to issue a subpœna for a witness, being within the jurisdiction of such court, to appear (at a time and place in the subpœna stated) before any officer authorized to take depositions to be used in the courts of the United States, or before any officer, clerk, or person

from the Pension Bureau designated or detailed to investigate or examine into the merits of any pension claim and authorized by law to administer oaths and take affidavits in such investigation or examination, there to give full and true answers to such written interrogatories and cross-interrogatories as may be propounded, or to be orally examined and cross-examined upon the subject of such claim; and witnesses subpœnaed pursuant to this and the two preceding sections shall be allowed the same compensation as is allowed witnesses in the courts of the United States and paid in the same manner."

Process to Enforce Subpœna.

Section 186, Revised Statutes, provides:

"If any witness, after being duly served with such subpœna, neglects or refuses to appear, or appearing refuses to testify, the judge of the district in which the subpœna is issued may proceed, upon proper process, to enforce obedience to the subpœna, or to punish the disobedience, in like manner as any court of the United States may do in case of process of subpœna ad testificandum issued by such court."

Oaths Before Notary or Commissioner.

Section 1778, Revised Statutes, provides:

"In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or

made before or by any notary public duly appointed in any State, District, or Territory, or any of the commissioners of the circuit courts, and when certified under the hand and official seal of such notary or commissioner shall have the same force and effect as if taken or made by or before such justice of the peace."

Oaths Administered Free.

The act of June 7, 1888, provides:

"That all United States officers now authorized ot administer oaths are hereby required and directed to administer any and all oaths reqkired to be made by pensioners and their witnesses in the execution of their vouchers for their pensions free of charge."

Fourth-Class Postmasters.

The act of August 23, 1894, provides:

"That hereafter, in addition to the officers now authorized to administer oaths in such cases, fourth-class postmasters of the United States are hereby required, empowered, and authorized to administer any and all oaths required to be made by pensioners and their witnesses in the execution of their vouchers with like effect and force as officers having a seal; and such postmaster shall affix the stamp of his office to his signature to such vouchers, and he is authorized to charge and receive for each voucher not exceeding 25 cents, to be paid by the pensioner."

CHAPTER XXI.

ATTORNEYS AND FEES.

Recognition and Regulation—Oath of Allegiance—Fee Law of June 20, 1878, Repealed—Fee Agreements and Amount of Fee. Articles of Agreement—Undue Advantage—Illegal Fees—Fee in Claims Under Act of June 27, 1890—Fee in Increase and Special-Act Cases—No Fee in Claims of Army Nurses—Direction of Payment—Certification of Fees—Payment of Fees—Ex-Employees of Departments—Government Officers—Reimbursement Cases—War and Navy Departments—Treasury Department—Postage Charge—Attorneys—Official Recommendation. Regulations.

Recognition and Regulation.

The act of July 4, 1884, provides:

"Sec. 5. That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, or attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims, and such Secretary may, after notice and opportunity for a hearing, suspend or exclude

from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall, with intent to defraud, in any manner deceive, mislead or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement."

Oath of Allegiance.

Section 3478, Revised Statutes, provides:

"Any person prosecuting claims, either as attorney or on his own account, before any of the Departments or Bureaus of the United States, shall be required to take the oath of allegiance and to support the Constitution of the United States, as required of persons in the civil service."

"[OATH.

"I, ——, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.]"

Section 3479, Revised Statutes, provides:

"The oath provided for in the preceding section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered."

Fee Law of June 20, 1878, Repealed.

The act of July 4, 1884, provides substantially as follows:

That an act entitled 'An act relating to claim agents and attorneys in pension cases', approved June 20, 1878, is hereby repealed: Provided, however, That no fee contracts filed with the Commissioner of Pensions in any case within the period commencing June 20, 1878, and ending July 4, 1884, shall be recognized as valid, but all lawful contracts filed prior to June 20, 1878 or subsequent to July 4, 1884, shall have full force and effect as hereinafter provided; and the lawful fee in cases settled prior to July 4, 1884, in which no fee contract was filed prior to June 20, 1878, shall be $10 and no more.

Fee Agreements and Amount of Fee.

As amended by the act of July 4, 1884, section 4786, Revised Statutes, is as follows:

"The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions duplicate articles of agreement without additional cost to the claimant, setting forth the fee agreed upon by the parties, which agreement shall be executed in the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension or bounty land, and no agreement is filed with the Commissioner as herein provided, the fee shall be $10 and no more. And such articles of agreement as may hereafter [subsequent to July 4,

1884,] be filed with the Commissioner of Pensions are not authorized, nor will they be recognized, except in claims for original pensions, claims for increase of pension on account of a new disability, in claims for restoration where a pensioner's name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, and in cases of dependent relatives whose names have been or may hereafter be dropped from the rolls on like testimony, upon the ground of nondependence, and in such other cases of difficulty and trouble as the Commissioner of Pensions may see fit to recognize them: Provided, That no greater fee than $10 shall be demanded, received, or allowed in any claim for pension or bounty land granted by special act of Congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension had been allowed:

"And provided further, That no fee shall be demanded, received, or allowed in any claim for arrears of pension or arrears of increase of pension allowed by any act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension or of increase of pension may be allowed."

Articles of Agreement.

The act of July 4, 1884, further provides:

"The articles of agreement herein provided for shall be in substance as follows, to wit:

"'ARTICLES OF AGREEMENT.

"'Whereas, I, ——, late a —— in Company ——, of the —— Regiment of —— Volunteers, war of 1861 (or, if the service be different, here state the same), having made application for pension under the laws of the United States:

" 'Now, this agreement witnesseth, that for and in consideration of services done and to be done in the premises, I hereby agree to allow my attorney, ——, of ——, the fee of —— dollars, which shall include all amounts to be paid for any service in furtherance of said claim; and said fee shall not be demanded by or payable to my said attorney (or attorneys), in whole or in part, except in case of the granting of my pension by the Commissioner of Pensions; and then the same shall be paid to him (or them) in accordance with the provisions of sections 4768 and 4769 of the Revised Statutes.

[Claimant's signature.]

[Two witnesses' signatures.]

"State of ——, County of ——, ss:

"'Be it known that on this the — day of ——, anno Domini eighteen hundred and ——, personally appeared the above-named ——, who after having read over to ——, in the hearing and presence of the two attesting witnesses, the contents of the foregoing articles of agreement, voluntarily signed and acknowledged the same to be —— free act and deed.

[Official signature.]

"'And now, to wit, this —— day of ——, anno Domini eighteen hundred and ——, I (or we) accept the provisions contained in the foregoing articles of agreement, and will, to the best of my

(or our) ability, endeavor faithfully to represent the interest of the claimant in the premises.

"'Witness my (or our) hand the day and year first above written.

[Signature of attorney.]

"'State of ——, County of ——, ss:

"'Personally came ——, whom I know to be the person he represents himself to be, and who, having signed the above acceptance of agreement, acknowledged the same to be —— free act and deed.'

[Official signature.]

"And if in the adjudication of any claim for pension in which such articles of agreement have been, or may hereafter be, filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein, then every such claim shall be adjudicated in the same manner as though no articles of agreement had been filed, deducting from the fee of $10 allowed by law such sum as the claimant shall show that he has paid to his said attorney."

Undue Advantage.

The act of July 4, 1884, further provides:

"Sec. 6. The Commissioner shall have power, subject to review by the Secretary, to reject or refuse to recognize any contract for fees, herein provided for, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract."

Illegal Fees.

The act of July 4, 1884, further provides:

"Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land who hall directly or indirectiy contract for, demand, or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for every such offense, be fined not exceeding $500 or imprisoned at hard labor not exceeding two years, or both, in the discretion of the court."

Fee in Claims Under Act of June 27, 1890.

The act of June 27, 1890, provides:

"Sec. 4. That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than $10, which sum shall be payable only upon the order of the Commissioner of Pensions, by the pension agent making payment of the pension allowed." * * *

Fee in Increase and Special-Act Cases.

The act of March 3, 1891, provides:

"That hereafter no agent or attorney shall demand, receive, or be allowed any compensation under existing law exceeding $2 in any claim for increase of pension on account of the increase of the disability for which the pension has been allowed, or for services rendered in securing the passage of any special act of Congress granting a pension or an increase of pension in any case that has been [before March 3, 1891,] presented at the Pension Office or is allowable under the general pension laws: And provided further, That any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase of disability for which pension was allowed, or who has rendered services in procuring the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws, who shall, directly or indirectly, contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding $500, or imprisoned not exceeding two years, or both, in the discretion of the court: Provided, however, That the foregoing provisions in relation to fees of agents or attorneys shall not apply to any case now pending where there is an existing lawful contract, express or implied."

No Fee in Claims of Army Nurses.

The act of August 5, 1892, provides:

"Sec. 2. That no fee, compensation, or allowance shall be paid to, received, or accepted by any agent, attorney, or other person instrumental in the prosecution of any claim for pension under this act." * * *

Direction of Payment.

Section 4785, Revised Statutes, as amended by the act of July 4, 1884, provides:

"No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding $25; nor shall such agent, attorney, or other person demand or receive such compensation, in whole or in part, until such pension or bounty-land claim shall be allowed: Provided, That in all claims allowed since June 20, 1878, where it shall appear to the satisfaction of the Commissioner of Pensions that the fee of $10, or any part thereof, has not been paid, he shall cause the same to be deducted from the pension and the pension agent to pay the same to the recognized attorney."

Certification of Fees.

Section 4768, Revised Statutes, as amended by the act of March 3, 1891, is substantially as follows:

The Commissioner of Pensions shall forward the certificate of pension granted in any case to the agent for paying pensions where such certificate is made payable, and at the same time forward therewith one of the articles of agreement filed in the case and approved by the Commissioner, setting forth the fee agreed upon between the claimant and the attorney or agent; and where no agreement is on file, as hereinbefore provided, he shall direct that a fee of $10 only be paid the agent or attorney in all cases except those provided for in the act of March 3, 1891, in which a fee of $2 only is payable.

Payment of Fees.

Section 4769, Revised Statutes, as amended by the act of March 3, 1885, provides:

"It shall be the duty of the agent paying such pension to deduct from the amount due the pensioner the amount of fees so agreed upon or directed by the Commissioner to be paid where no agreement is filed and approved, and to forward or cause to be forwarded to the agent or attorney of record named in such agreement, or, in case there is no agreement, to the agent prosecuting the case, the amount of the proper fee."

Ex-Employees of Departments.

Section 190, Revised Statutes, provides:

"It shall not be lawful for any person appointed after the 1st day of June, 1872, as an officer, clerk, or employee in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which

was pending in either of said Departments while he was such officer, clerk, or employee, nor in any manner nor by any means to aid in the prosecution of any such claim within two years next after he shall have ceased to be such officer, clerk, or employee."

Government Officers.

Section 5498, Revised Statutes, provides:

"Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under or in connection with any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim, from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than $5,000, or suffer imprisonment not more than one year, or both."

Reimbursement Cases.

When a pension claim is being completed to obtain the accrued pension for the reimbursement of the person who bore the expenses of last illness and burial of the claimant, or who is held responsible for such expenses, (see "Accrued Pension,") no attorney is recognized by the Pen-

sion Bureau and no fee is certified and paid through the Pension Agent.

The determination of title to and payment of a claim for reimbursement rests with the "Auditor for the Interior Department," who in general will recognize a power of attorney to the extent of forwarding the draft for payment in care of the attorney, if authority for his so doing is embodied in the power of attorney filed. The matter of fee is not subject to law or official regulation, but is subject solely to agreement between the reimbursement claimant and the attorney.

War and Navy Departments.

The matter of fee in cases before the War and Navy Departments for correction or amendment of official records, procurement of certificates of honorable service in lieu of lost discharges, commutation of rations, etc., is not subject to law or official regulation, but is subject solely to agreement between the claimant and attorney.

It has been held by the Pension Bureau that when correction of a record of desertion is essential to the prosecution of a pension claim, no fee for the procurement of such correction at the War or Navy Departments shall be allowable to the attorney of record in the pension claim

Treasury Department.

The following circular order of the Second Comptroller [now "Comptroller of the Treasury"] dated April 25, 1867, is still in force:

"Upon consultation with the auditors whose work is subject to the revision of this office, the

following has been adopted as the scale of fees to be allowed claim agents or attorneys for the collection of back pay, bounty, prize money, or other moneys due from the United States to persons who are or have been officers or enlisted men of the Army, Navy, or Marine Corps of the United Sates, or their heirs, except in cases of colored claimants, for the collection of whose claims the amount of fees is prescribed in section 2, act of July 26, 1866, and joint resolution No. 25, approved March 29, 1867, viz:

"For the preparation and prosecution of claims for, and the collection and remittance of, all sums not exceeding $200, 10 per centum; for all sums exceeding $200 and less than $800, 10 percentum on the first $200, and 5 per centum on the remainder thereof; and for all sums of $800 and upward, $50; and said fees shall include all expenses incident to the collection of said claims, except the expense of the necessary notarial or other acknowledgments, which shall be defrayed by the claimant; and any agent or attorney who shall charge, directly or indirectly, in any case, a greater sum for his services in preparing and prosecuting said claims, and collecting and remitting the amount due, shall be deemed guilty of malpractice, and upon satisfactory evidence of the fact of such overcharge being presented to the Second, Third, or Fourth Auditor, [now "Auditor for the War Department," "Auditor for the Interior Department," and "Auditor for the Navy Department," respectively,] or to the Second Comptroller, said agent or attorney shall be suspended from the further posecution of claims of any kind in or through any or either of the above named offices."

The joint resolution of July 26, 1866, refers to attorneys' fees in bounty and pay claims of colored soldiers and sailors and their heirs, and provides:

"Sec. 2. And be it further resolved, That whenever application shall be made by any claimant for bounty under the provisions of the joint resolution aforesaid, by or through any agent or attorney, such agent or attorney shall hereafter be required to file with each claim his oath or affirmation that he has no interest whatever in said bounty beyond the fees for collection of the same, which are hereby fixed and established as follows, vig: For the preparation and prosecution of claims for, and the collection and remittance of, all sums not exceeding $50, the sum of $5; for all sums exceeding $50 and less than $100, the sum of $7.50, and for all sums exceeding $100 the sum of $10; and said fees shall include all expenses incident to the collection of said claims, except the expense of the necessary affidavits and notarial or other acknowledgments, which shall be defrayed by the claimant; and any agent or attorney who shall charge, directly or indirectly, in any case, a greater sum for his services in preparing and prosecuting said claims and collecting and remitting the amount due, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not exceeding $3,000 nor less than $1,000, and shall be forever excluded from prosecuting military or naval claims agaist the Government."

The act of March 3, 1879, contains the following proviso:

"Provided, That if an agent or attorney be employed, the allowance for his services shall not in any case exceed that contemplated in the scale of fees and allowances fixed by the second section of a joint resolution approved July 26, 1866, entitled 'Joint resolution amendatory of a joint resolution respecting bounties to colored soldiers, and the pensions, bounties, and allowances to their heirs,' approved June 15, 1866, and such allowance shall be stated in a separate certificate in favor of the agent or attorney simultaneously with the issue of a certificate for the amount due the claimant."

Postage Charge.

The Pension Bureau, with the knowledge and approval of the Department of the Interior, recognizes that, exclusive of the legal fee for professional services in a pension claim, the attorney of record may properly charge and receive a reasonable sum of money to cover the expenses of correspondence. By order 169, dated May 26, 1891, the limit is placed at 50 cents.

It is also customary for attorneys in some instances to make a small charge, varying in amount, for postage and other correspondence expenses, in claims before the Treasury, War and Navy Departments.

Attorneys.

The necessity for persons who make a specialty of securing to claimants their just dues under the laws enacted for their benefit is equally as great

as is the necessity for persons who make a specialty of securing justice in the courts. Any attempt to abridge the rights and privileges of attorneys who appear for claimants against the Government may well be regarded an indirect attempt to abridge the rights of claimants themselves. Some claimants succeed as their own attorneys; many more believe that they can, but all will find it to their advantage to secure the services of a competent attorney when entering into the perplexities which are often attendant upon the prosecution of a Government claim, and which require experience to overcome.

There are competent attorneys and incompetent attorneys. The law governing attorneys' fees in pension cases makes no distinction between the two classes; so that the services of the one cost no more than the services of the other. Although many persons doubt whether Washington attorneys have any advantage over attorneys at a distance, the fact remains that an attorney located convenient to the Bureau or Department before which the claim of his client is being prosecuted, can often serve their mutual interests to a better advantage than if located at a distance.

Official Recommendation.

The following is part of the printed regulations of the Pension Bureau, relative to requests for recommendation of attorneys:

"The Pension Office is constantly in receipt of letters from claimants, or others writing for them, asking for information as to the reputation and

standing of attorneys and for advice as to the propriety of employing this attorney or that firm to assist in the prosecution of a given claim. The office is often requested to recommend some good reliable attorney for such employment.

"The impropriety of such requests must be apparent to all. A compliance with them by the Commissioner of Pensions would be still more improper. The presumption of the office is that every attorney is reliable until the contrary is shown. Claimants must exercise their own discretion in those matters. The Pension Office invariably declines to make suggestions or to furnish advice on that subject. To do differently would be to inaugurate a system whereby unjust discriminations, based upon personal favoritism or personal prejudice, would be unavoidable. Claimants and others will, therefoe, save the office and themselves much trouble by refraining from correspondence wherein such information is requested. In the future communications upon this subject will not be replied to."

Regulations.

The following are the regulations at present in force issued by the Secretary of the Interior under date of February 1, 1886, for the admission, p actice, and disbarment of attorneys before the Department of the Interior and its several Bureaus, including the Pension Bureau:

"Under the authority conferred on the Secretary of the Interior by the fifth section of the act of July 4, 1884, it is hereby prescribed that an at-

torney at law who desires to represent claimants before the Department or one of its Bureaus, shall file a certificate, under the seal of a United States, State, or Territorial court, that he is an attorney in good standing.

"An agent or other person who desires to represent claimants before the Department or one of its Bureaus shall file a certificate from a judge of a United States, State, or Territorial court, duly authenticated under the seal of the court, that such agent or other person is of good moral character and in good repute, possessed of the necessary qualifications to enable him to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims.

"The Secretary may demand additional proof of qualifications, and reserves the right to decline to recognize any attorney, agent, or other person applying to represent claimants under this rule.

"The oath of allegiance required by section 3478 of the United States Revised Statutes must also be filed.

"In the case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required.

"Unless specially called for, the certificate above referred to will not be required of any attorney or agent heretofore recognized and now in good standing before the Department.

"An applicant for admission to practice under the above regulations must address a letter to the Secretary of the Interior, inclosing the certificate

and oath above required, in which letter his full name and postoffice address must be given. He must state whether or not he has ever been recognized as attorney or agent before this Department or any Bureau thereof, and if so, whether he has ever been suspended or disbarred from practice. He must also state whether he holds any office under the Government of the United States.

"No person who has been an officer, clerk, or employee of this Department within two years prior to his application to appear in any case pending herein shall be recognized or permitted to appear as an attorney or agent in any such case as shall have been pending in the Department at or before the date he left the service.

"Provided, This rule shall not apply to officers, clerks, or employees of the Patent Office, nor to cases therein.

"Whenever an attorney or agent is charged with improper practices in prosecuting a claim before any Bureau of this Department, the head of such Bureau shall investigate the matter, giving the attorney or agent due notice, together with a statement of the charges against him, and allow him an opportunity to be heard in the premises. When the investigation shall have been concluded all the papers shall be forwarded to the Department, with a statemant of the facts and such recommendation as to disbarment from practice as the head of the Bureau may deem proper, for the consideration of the Secretary of the Interior. During the investigation the attorney or agent will be recognized as such, unless for special reasons the Secretary shall order his suspension from practice.

"If any attorney or agent in good standing before the Department shall knowingly employ as subagent or correspondent a person who has been prohibited from practice before the Department, it will be sufficient reason for the disbarment of the former from practice.

"Upon the disbarment of an attorney or agent notice thereof will be given to the heads of Bureaus of this Department and to the other Executive Departments; and thereafter, until otherwise ordered, such disbarred person will not be recognized as attorney or agent in any claim or other matter before this Department or any Bureau thereof."

CHAPTER XXII.

CRIMINAL OFFENSES UNDER THE PENSION LAWS.

Pledge or Transfer of Pension—False Affidavits and Post-dated Vouchers—Embezzlement of Pension Money—Perjury—Subornation of Perjury—Forgery—Counterfeiting—Forged Papers in Possession—False Personation of Claimant—False Claims. Conspiracy—Illegal Attorney Fees—Bribery—False Personation of Government Officers—No Fee to Government Officers in Pension Claims.

Pledge or Transfer of Pension.

Section 4745, Revised Statutes, as amended by the act of February 28, 1883, is substantially as follows:

Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension which has been or may hereafter be granted, shall be void and of no effect, and any person who shall pledge, or receive as a pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension or pension certificate which has been or may hereafter be granted or issued, or who shall hold the same as collateral security for any debt or promise or upon

any pretext of such security or promise, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding $100 and the costs of the prosecution; and any person who shall retain the certificate of a pensioner and refuse to surrender the same upon the demand of the Commissioner of Pensions, or a United States pension agent, or any other person authorized by the Commissioner of Pensions or the pensioner to receive the same, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding $100 and the costs of the prosecution.

False Affidavits and Post-Dated Vouchers.

Section 4746, Revised Statutes, provides:

"Every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions, or who knowingly or willfully presents or causes to be presented at any pension agency any power of attorney or other paper required as a voucher in drawing a pension, which paper bears a date subsequent to that on which it was actually signed or executed, shall be punished by a fine not exceeding $500 or by imprisonment for a term not exceeding three years, or by both."

Embezzlement of Pension Money.

Sections 4783 and 5486, Revised Statutes, as amended by the act of February 10, 1891, provide:

"Every guardian, conservator, curator, committee, tutor, or other person having charge and custody in a fiduciary capacity of the pension of his ward, who shall embezzle the same in violation of his trust, or fraudulently convert the same to his own use, shall be punished by fine not exceeding $2,000 or imprisonment at hard labor for a term not exceeding five years, or both at the discretion of the court."

Perjury.

Section 5392, Revised Statutes, provides:

"Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than $2,000, and by imprisonment at hard labor not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed."

Subornation of Perjury.

Section 5393, Revised Statutes, provides:

"Every person who procures another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed."

Forgery.

Section 5421, Revised Statutes, provides:

"Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited, or willingly aids or assists in the false making, altering, forging, or counterfeiting any deed, power of attorney, order, certificate, receipt, or other writing for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States, or any of their officers or agents, any sum of money, or who utters or publishes as true, or causes to be uttered or published as true, any such false, forged, altered, or counterfeited deed, power of attorney, order, certificate, receipt, or other writing with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, or who transmits to or presents at, or causes or procures to be transmitted to or presented at, any office or officer of the Government of the United States any deed, power of attorney, order, certificate, receipt, or other writing in support of or in relation to any account or claim with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited, shall be imprisoned at hard labor for a period of not less than one year nor more than 10 years, or shall be imprisoned not more than five years and fined not more than $1,000."

Counterfeiting.

Section 5479, Revised Statutes, provides:

"If any person shall falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly aid or assist in the false making, altering, forging, or counterfeiting any bond, bid, proposal, guarantee, security, official bond, public record affidavit, or other writing for the purpose of defrauding the United States, or shall utter or publish as true, or cause to be uttered or published as true, any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, knowing the same to be false, forged, altered, or counterfeited; or shall transmit to or present at, or cause or procure to be transmitted to or presented at the office of any officer of the United States any such false, forged, altered, or counterfeited bond, bid, proposal, guarantee, security, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for the purpose of defrauding the United States, shall be punishable by a fine of not more than $1,000, or by imprisonment at hard labor for not more than 10 years, or by both such punishments."

Forged Papers in Possession.

Section 5422, Revised Statutes, provides:

"Every person who knowingly, and with intent to defraud the United States, has in his possession any false, altered, forged, or counterfeited deed, power of attorney, order, certificate, receipt, or other writing for the purpose of enabling an-

other to obtain from the United States, or any of their officers or agents, any sum of money, shall be fined and imprisoned at the discretion of the court."

False Personation of Claimant.

Section 5435, Revised Statutes, provides:

"Every person who falsely personates any true and lawful holder of any share or sum in the public stocks or debt of the United States, or any person entitled to any annuity, dividend, pension, prize-money, wages, or other debt due from the United States, and, under color of such false personation, transfers or endeavors to transfer such public stock or any part thereof, or receives or endeavors to receive the money of such true and lawful holder thereof, or the money of any person really entitled to receive such annuity, dividend, pension, prize money, wages, or other debt, shall be punished by a fine of not more than $5,000 and by imprisonment at hard labor not more than 10 years."

False Claims.

Section 5438, Revised Statutes, provides:

"Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who. for the

purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any Department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, or who, having charge, possession, custody, or control of any money or other public property used or to be used in the military or naval service, who, with intent to defraud the United States or willfully to conceal such money or other property, delivers or causes to be delivered, to any other person having authority to receive the same, any amount of such money or other property less than that for which he received a certificate or took a receipt, and every person authorized to make or deliver any certificate, voucher, receipt, or other paper certifying the receipt of arms, ammunition, provisions, clothing, or other property so used or to be used, who makes or delivers the same to any other person without a full knowledge of the truth of the facts stated therein and with intent to defraud the United States, and every person who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, sailor, or other person called into or employed in the military or naval service any arms, equipments, ammunition, clothes, military stores, or other public property, such soldier, sailor, officer, or

other person not having the lawful right to pledge or sell the same, every person so offending in any of the matters set forth in this section shall be imprisoned at hard labor for not less than one nor more than five years, or fined not less than $1,000 nor more than $5,000."

Conspiracy.

Section 5440, Revised Statutes, provides:

"If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than $1,000 and not more than $10,000, and to imprisonment not more than two years."

Illegal Attorney Fees.

Section 5485, Revised Statutes, provides:

"Any agent or attorney, or any other person instrumental in prosecuting any claim for pension or bounty land, who shall, directly or indirectly, contract for, demand, or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is provided in the title pertaining to pensions, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed

guilty of a high misdemeanor, and upon conviction thereof shall for every such offense be fined not exceeding $500, or imprisoned at hard labor not exceeding two years, or both, at the discretion of the court."

The pension act of June 27, 1890, provides:

"Sec. 4. That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than $10, which sum shall be payable only upon the order of the Commissioner of Pensions, by the pension agent making payment of the pension allowed, and any person who shall violate any of the provisions of this section or who shall wrongfully withhold from a pensioner or claimant the whole or any part of a pension or claim allowed or due such pensioner or claimant under this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding $500, or be imprisoned at hard labor not exceeding two years. or both, in the discretion of the court."

The army nurses' pension act of August 5, 1892, provides:

"Sec. 2. That no fee, compensation, or allowance shall be paid to, received, or accepted by any agent, attorney, or other person instrumental in the prosecution of any claim for pension under this act; and any person who may make any

claim upon any applicant for any fee, compensation, or allowance shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding $500, or imprisoned at hard labor not exceeding one year, or both, in the discretion of the court; and it shall be the duty of the Interior and War Departments to render all proper aid to applicants under this act."

Bribery.

Section 5501, Revised Statutes, provides:

"Every officer of the United States, and every person acting for or on behalf of the United States in any official capacity, under or by virtue of the authority of any Department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House or of both Houses thereof, who asks, accepts, or receives any money or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may be by law brought before him in his official capacity or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section."

(The preceding section, 5500, Revised Statutes, imposes a punishment by a fine not more than three times the amount asked, accepted, or received, and by imprisonment not more than three years.)

Section 5451, Revised Statutes, provides:

"Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any Department or office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House or both Houses thereof, with intent to influence his decision or action on any question, matter, cause or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in or allow any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section."

(The preceding section, 5450, Revised Statutes, imposes a punishment by a fine not more than three times the amount of money or value of the thing so offered, promised, given, made, or tendered, or caused or procured to be so offered, promised, given, made, or tendered, and shall be, moreover, imprisoned not more than three years.)

False Personation of Government Officer.

The act of April 18, 1884, provides:

"Every person who, with intent to defraud either the United States or any person, falsely assumes or pretends to be an officer or employee acting under the authority of the United States, or any Department or any officer of the Government thereof, and who shall take upon himself to act as such, or who shall in such pretended character demand or obtain from any person or from the United States, or any Department or any officer of the Government thereof, any money, paper, document, or other valuable thing, shall be deemed guilty of felony, and shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment not longer than three years, or both said punishments, in the discretion of the court."

No Fee to Government Officers in Pension Claims.

Section 1782, Revised Statutes, provides:

"No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department or other officer or clerk in the employ of the Government shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered or to be rendered to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department,

court martial, bureau officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined no more than $10,000, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States."

CHAPTER XXIII.

BOUNTY-LAND.

Early Legislation—The Mexican War—1812 and Indian Wars. Discharged for Disability or Captured—Heirs Under the Mexican War Acts—Heirs Under the 1812 and Indian Wars Acts. The Climax of Bounty-Land Legislation—Service Conferring no Title—Widows and Children Under Act of March 3, 1855. Widowhood—Minority—The Navy—Indians in U. S. Military Service—Evidence of Service—Computation of Service—Desertion or Dishonorable Discharge—Evidence of Title—Decease Claimant—Title to More than One Land-Warrant—Disloyalty During the Rebellion—Warrant Lost or Destroyed—Warrant Erroneously Issued—Locating Under Warrant—Assignment Before Issue Void—Treasury Scrip in Lieu of Land-Warrant.

Early Legislation.

The first bounty-land provision was contained in a resolution of Congress, September 16, 1776, "to provide for the raising of 88 battalions to serve for the war." It is as follows:

"Resolved, That, in addition to a money bounty of $20 to each non-commissioned officer and private soldier, Congress make provision for granting lands, in the following proportions, to the officers and soldiers who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress, and to the representatives of such officers and soldiers as shall be

slain by the enemy. Such lands to be provided by the United States, and whatever expense shall be necessary to procure such land, the said expense shall be paid and borne by the (several) States, in the same proportion as the other expenses of the war, viz: to a Colonel, 500 acres; to a Lieutenant-Colonel, 450 acres; to a Major, 400 acres; to a Captain, 300 acres; to a Lieutenant, 200 acres; to an ensign, 150 acres; each non-commissioned officer and soldier, 100 acres." By resolution of two days later date this was extended to those previously enlisted for the war. The resolution of August 12, 1780, extended it to general officers; brigadier-generals to have 850 acres, and major-generals 1,100 acres.

The first enactment on the subject of bounty-land, after the adoption of the Federal Constitution, appears to have been the act of December 24, 1811, which, for the purpose of completing the organization of the regular army, provided for the issue of warrants for 160 acres of land to persons enlisting or re-enlisting therein for five years, and who were honorably discharged. The subsequent acts of January 10, 1812, January 20, 1813, and December 10, 1814, with the amendatory enactment of April 16, 1816, also apply only to persons enlisting into the regular army for "five years or during the war" (of 1812) and honorably discharged. For enlistments before December 10, 1814, 160 acres was provided; and for enlistment

after that date 320 acres. If the soldier died in the service, heirs and legal representatives in general were entitled to the bounty-land under those enactments before that of December 10, 1814, under which latter enactment (applying to the regular army enlistments subsequent to its date) widows, children, and parents alone were entitled. All of these laws, none of which made provision for commissioned officers entering the service as such, nor for their heirs, finally expired by limitation on June 26, 1858.

The act of March 5, 1816, with the amendatory enactment of March 3, 1817, provided bounty-land, ranging from 960 to 160 acres, to Canadians, former residents of the United States, who, whether as officers or enlisted men, joined the armies of the United States in the War of 1812, and served six months, or if discharged before the elapse of that period, were discharged for disability incurred in the service and line of duty. Widows and children were entitled, if the soldier died in the service. This law expired by limitaton on March 3, 1818.

If volunteers enlisted in the army for 12 months, under the act of February 6, 1812, died in service, their heirs and legal representatives in general were entitled to bounty-land of 160 acres. This law also expired on June 26, 1858.

Under the act of April 16, 1816, the children of regulars dying in service, who were under the age of 16 at the date of death of their fathers

might elect to receive a "five-years'-half pay" pension instead of the bounty-land to which they were entitled. If they elected to and did receive the pension, their title to bounty-land was extinguished. This law expired by limitation on March 3, 1822.

Soldiers or their heirs who received bounty-land under any of these early laws, or children who received pension under the act of April 16, 1816, as above, are not entitled to a second bounty-land for the same service under the laws subsequently enacted.

The Mexican war

The act of February 11, 1847, the first of the latter enactments (section 2418, Revised Statutes) provided for the issue of warrants for 160 acres of land to the enlisted men of the regular army, or of any volunteer organization mustered into service for a period of not less than 12 months, serving in the Mexican war. Those of volunteer organizations mustered in for less than 12 months were entitled to a warrant for 40 acres only. (Section 2419, Revised Statutes.) The act of July 10, 1848, extended the provisions of this act to the enlisted men of the ordnance corps, and that of August 10, 1848, to the officers and enlisted men of the marine corps serving with the army, and to the artificers and laborers of the ordnance corps. In these cases the bounty-

land was to be in lieu of all prize-money and other extra allowances.

The act of September 28, 1850, further extended the provisions of the act of February 11, 1847, to the officers of the regular army and volunteers serving in the Mexican war.

It has been held that a person may receive a warrant for each of two separate periods of service in the Mexican war.

1812 and Indian Wars.

The act of September 28, 1850, above, (section 2418, Revised Statutes,) also provided for the issue of warrants for 160 acres to all officers and the enlisted men, whether of regulars, volunteers or militia, serving in the 1812 war or in any of the various Indian wars after 1790, and before the date of the act, who enlisted for 12 months or during the war, and actually served nine months; a warrant for 80 acres to those who enlisted for six months and actually served four months, and a warrant for 40 acres to those who enlisted for any or an indefinite period and actually served one month. Marines who served with the army were held to be entitled. The act of March 22, 1852, (section 2420, Revised Statutes,) extended the benefits of the act of September 28, 1850, to the officers and enlisted men of the militia, volunteers or State troops of any State or Territory

called into service at any time after June 18, 1812, and before the date of the act, provided they served the requisite periods.

Discharged for Disability or Captured.

Under the acts of February 11, 1847, and September 28, 1850, and their several amendments, above, if the soldier were honorably discharged for disability originating in service, he was entitled to a warrant for the same amount of land that he would have been entitled to receive had he served the full term of his enlistment; and if captured by the enemy, he was entitled to the same amount as though he had enlisted for the whole term made up by the addition of the period of his actual service to the period of captivity.

Heirs Under the Mexican War Acts.

The act of February 11, 1847, with its amendments, provided for the widows, children, fathers, mothers, and brothers and sisters, in the order named, of officers and enlisted men of the regular army, volunteers and ordnance corps, of artificers and laborers of the ordnance corps, and of the officers and enlisted men of the marine corps, co-operating with the army, whose deaths were due to service in the Mexican war. The heirs of persons received into the service for a less period than 12 months were not entitled in cases where

death occurred subsequent to the date of the act, after discharge from the service. (Section 2419, Revised Statutes.)

The mother was entitled, even though the person from whose service her claim arose was her illegitimate child, but not so in case of the father. Brothers and sisters are entitled jointly, and those of the half-blood equally as well as those of the whole blood. Illegitimate brothers and sisters of a person himself illegitimate are also entitled.

Heirs Under the 1812 and Indian Wars Acts.

The act of September 28, 1850, with the amendatory act of March 22, 1852, provided for the widows and minor children of the officers and enlisted men of the regulars, volunteers or militia serving in the 1812 war or any of the Indian wars after 1790 and before September 28, 1850, and of the militia, volunteers or State troops of any State or Territory, in service at any time after June 18, 1812, and previous to March 22, 1852, without regard to death-cause.

The act of September 28, 1850, provided further that, if the soldier was killed in battle his widow should be entitled to receive a warrant for 160 acres, without regard to the period for which he had enlisted. (Section 2424, Revised Statutes.)

In the compilation of the Revised Statutes in

1873, section 2418 of the Statutes, as revised, although evidently intended to contain only the provisions of the acts of February 11, 1847, and September 28, 1850, and their several amendments, the wording was such as to provide for the fathers, mothers, and brothers and sisters of persons serving in the 1812 and Indian wars after 1790 and before March 3, 1850, in addition to the widows and children for whom provision was made by the act of September 28, 1850.

The Climax of Bounty-Land Legislation.

The act of March 3, 1855, covers all wars previous to the date of the act. The classes of persons provided for are as follows, as embodied in the Revised Statutes:

"Sec. 2425. Each of the surviving persons specified in the classes enumerated in the following section, who has served for a period of not less than 14 days in any of the wars in which the United States have been engaged since the year 1790 and prior to the 3d day of March, 1855, shall be entitled to receive a warrant from the Department of the Interior for 160 acres of land; and, where any person so entitled has, prior to the 3d day of March, 1855, received a warrant for any number of acres less than 160, he shall be allowed a warrant for such quantity of land only as will make, in the whole, with what he may have received prior to that date, 160 acres.

"Sec. 2426. The classes of persons embraced as beneficiaries under the preceding section are as follows, namely:

"First. Commissioned and non-commissioned officers, musicians, and privates, whether of the regulars, volunteers, rangers, or militia, who were regularly mustered into the service of the United States.

"Second. Commissioned and non-commissioned officers, seamen, ordinary seamen, flotilla-men, marines, clerks, and landsmen in the navy.

"Third. Militia, volunteers, and State troops of any State or Territory, called into military service and regularly mustered therein, and whose services have been paid by the United States.

"Fourth. Wagon-masters and teamsters who have been employed under the direction of competent authority, in time of war, in the transportation of military stores and supplies.

"Fifth. Officers and soldiers of the Revolutionary war, and marines, seamen, and other persons in the naval service of the United States during that war.

"Sixth. Chaplains who served with the army.

"Seventh. Volunteers who served with the armed forces of the United States in any of the wars mentioned, subject to military orders, whether regularly mustered into the service of the United States or not.

"Sec. 2427. The following class of persons are included as beneficiaries under section 2425, without regard to the length of service rendered:

"First. Any of the classes of persons mentioned in section 2426 who have been actually engaged in any battle in any of the wars in which this country has been engaged since 1790, and prior to March 3, 1855.

"Second. Those volunteers who served at the invasion of Plattsburg, in September, 1814.

"Third. The volunteers who served at the battle of Nickojack against the confederate savages of the South.

"Fifth. The volunteers who served at the attack on Lewistown, in Delaware, by the British fleet, in the War of 1812."

Free negroes duly enlisted into the service, and officers and seamen of revenue-cutters co-operating with the navy, and their heirs, are entitled.

Service Conferring No Title.

Troops employed in removing the Cherokee Indians from North Carolina in 1838 are not entitled to bounty-land unless called into service for the express purpose of suppressing the hostilities of the Indians, or actively engaged in such duty. Service in the northern frontier disturbance, or "Patriot War," in 1838-9; or in the "Toledo War," so-called, a disturbance between Michigan and Ohio in 1835-6; or in the Winnebago disturbance in 1827; or in the "Indian Stream War," so-called, a disturbance between New Hampshire and Canada, lasting from November, 1835, till February, 1836, does not give title. Contract surgeons, mechanics and laborers employed in the army, quartermaster's employes, privateersmen, or any persons in the service of the United States who were dishonorably discharged or deserted, are not entitled.

No person is entitled to bounty-land for service rendered subsequent to March 3, 1855.

Widows and Children Under Act of March 3, 1855.

The title of widows and children as defined by the act of March 3, 1855, is embodied in the Revised Statutes, as follows:

"Sec. 2428. In the event of the death of any person who would be entitled to a warrant, as provided in section 2425, leaving a widow, or, if no widow, a minor child, such widow or such minor child shall receive a warrant for the same quantity of land that the decedent would be entitled to receive, if living on the 3d day of March, 1855."

It will be noted that this provision confers title on widows and children debarred under the Mexican war acts of 1847 and amendments because of inability to show the soldier's death due to his service in that war.

Widowhood.

The Mexican war acts were addressed to "the widow." The act of September 28, 1850, relative to the 1812 and Indian wars, contained the proviso: "Provided, She is unmarried at the date of her application." The act of March 3, 1855, contained the following, as embodied in section 2429, Revised Statutes:

"Sec. 2429. A subsequent marriage shall not impair the right of any widow, under the preceding section, if she be a widow at the time of her application."

A widow who remarried, but has been divorced from the second husband, and has not again married, is considered the widow of the first husband.

Minority.

The Mexican war acts did not require that children claiming bounty-land thereunder be minors at the date of the act. The act of September 28, 1850, relative to the 1812 and Indian wars, was addressed to "minor children." In the act of March 3, 1855, occurred the following, now embodied in section 2430, Revised Statutes:

"Sec. 2430. Persons within the age of 21 years on the 3d day of March, 1855, shall be considered minors within the intent of section 2428."

It has been held that no child is entitled under any of the bounty-land laws unless under 21 on March 3, 1855.

The Navy.

Except as to the officers and enlisted men of the Marine Corps, serving with the army in the Mexican war, and their heirs, provided for by the act of August 10, 1848, amending the act of February 11, 1847, there is no bounty-land provision

for the navy other than the act of March 3, 1855; and as fathers, mothers, and brothers and sisters have no title under that act, the widows and minor children are the only heirs of persons serving in the navy who are entitled to bounty-land, except as above

Indians in U. S. Military Service.

The act of March 3, 1855, made the following provision, now embodied in section 2434, Revised Statutes:

"Sec. 2434. The provisions of all the bounty-land laws shall be extended to Indians, in the same manner and to the same extent as to white persons."

Evidence of Service.

The act of May 14, 1856, contained a provision now embodied in section 2431, Revised Statutes, as follows:

"Sec. 2431. Where no record evidence of the service for which a warrant is claimed exists, parol evidence may be admitted to prove the service performed, under such regulations as the Commissioner of Pensions may prescribe."

Computation of Service.

The act of March 22, 1852, contained a provision which, as amended by the act of May 14, 1856, is embodied in section 2433, Revised Statutes, as follows:

"Sec. 2433. When any company, battalion, o regiment, in an organized form, marched more than 20 miles to the place where they were mustered into the service of the United States, or were discharged more than 20 miles from the place where such company, battalion, or regiment was organized, in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion, or regiment, there shall be allowed one day for every 20 miles from the place where the company, battalion, or regimen was organized to the place where the same was mustered into the service of the United States, and one day for every 20 miles from the place where such company, battalion, or regiment was discharged, to the place where it was organized, and from whence it marched to enter the service, provided that such march was in obedience to the command or direction of the President, or some general officer of the United States commanding an army or department, or the chief executive officer of the State or Territory by which such company, battalion, or regiment was called into service."

Desertion or Dishonorable Discharge.

The bounty-land acts from the beginning contained provisions substantially embodied in section 2438, Revised Statutes, as follows:

"Sec. 2438. No person who has been in the military service of the United States shall, in any case, receive a bounty-land warrant if it appears by the muster-rolls of his regiment or corps that he deserted or was dishonorably discharged from service."

Evidence of Title.

In the act of May 14, 1856, was included provisions now embodied in sections 2432 and 2435, Revised Statutes, as follows:

"Sec. 2432. Where a certificate or warrant for bounty-land for any less quantity than 160 acres has been issued to any officer or soldier, or to the widow or minor child of any officer or soldier, the evidence upon which such certificate or warrant was issued shall be received to establish the service of such officer or soldier in the application of himself, or of his widow or minor child, for a warrant for so much land as may be required to make up the full sum of 160 acres, to which he may be entitled under the preceding section, on proof of the identity of such officer or soldier, or, in case of his death, of the marriage and identity of his widow, or, in case of her death, of the identity of his minor child. But if, upon a review of such evidence, the Commissioner of Pensions is not satisfied that the former warrant was properly granted, he may require additional evidence, as well of the term as of the fact of service."

"Sec. 2435. Where a pension has been granted to any officer or soldier, the evidence upon which such pension was granted shall be received to establish the service of such officer or soldier in his application for bounty-land; and upon proof of his identity as such pensioner, a warrant may be issued to him for the quantity of land to which he is entitled; and in case of the death of such pensioned officer or soldier, his widow shall be entitled to a warrant for the same quantity of

land to which her husband would have been entitled, if living, upon proof that she is such a widow, and in case of the death of such officer or soldier, leaving a minor child and no widow, or where the widow may have deceased before the issuing of any warrant, such minor child shall be entitled to a warrant for the same quantity of land as the father would have been entitled to receive if living, upon proof of the decease of father and mother. But if, upon a review of such evidence, the Commissioner of Pensions is not satisfied that the pension was properly granted, he may require additional evidence, as well of the term as of the fact of service."

Deceased Claimant.

A provision of the act of June 3, 1858, is embodied in section 2444, Revised Statutes, as follows:

"Sec. 2444. When proof has been or hereafter is filed in the Pension Office, during the lifetime of a claimant, establishing, to the satisfaction of that office, his right to a warrant for military services, and such warrant has not been, or may not be, issued until after the death of the claimant, and all such warrants as have been heretofore issued subsequent to the death of the claimant, the title to such warrants shall vest in his widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant; and all military bounty-land warrants issued pursuant to law shall be treated as personal chattels, and may be conveyed by assignment of such

widow, heirs, or legatees, or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only."

The right of completion of a claim for bounty-land, incomplete at the claimant's death, is extended to the legal representatives of the deceased by act of March 3, 1869, now embodied in section 2445, Revised Statutes, as follows:

"Sec. 2445. The legal representatives of a deceased claimant for a bounty-land warrant, whose claim was filed prior to his death, may file the proofs necessary to perfect such claim."

Title to More Than One Land-Warrant.

Under the act of March 3, 1855, persons (including no heirs other than widows and minor children) who previously received warrants for less than 160 acres, are entitled to receive warrants for the difference between 160 acres and that previously received. If the soldier received less than 160 acres, the heirs specified are entitled to the difference.

If under the early enactments a person or his heirs received, or were entitled to receive, bounty-land for service in the 1812 war, he or they would still be entitled under the acts of September 28, 1850, or March 3, 1855, for service in any other war than that of 1812; and if entitled under the Mexican war act of February 11, 1847, he or they would

still be entitled under the acts of 1850 or 1855 for service in any war other than that with Mexico.

A widow who has been the wife consecutively of two men whose services entitled them to bounty-land, is entitled on account of the services of but one.

Heirs have no title independent of that which the person who served would have if living. For instance, if a soldier received a warrant for 160 acres for Mexican war service, his heirs are not entitled to any land-warrant for that service.

Disloyalty During the Rebellion.

Disloyalty to the General Government during the war of the rebellion, whether on the part of the claimant or, in heirs' claims, on the part of the person from whose service the claim arises, bars all title to bounty-land, a warrant for which had not already been issued previous to the rebellion. This is in accordance with the joint resolution of March 2, 1867, now embodied in section 3480, Revised Statutes, which is as follows:

"Sec. 3480. It shall be unlawful for any officer to pay any account, claim, or demand against the United States which accrued or existed prior to the 13th day of April, 1861, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor of any person who during such rebellion was not known to

be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim or demand, until this section is modified or repealed. But this section shall not be construed to prohibit the payment of claims founded upon contracts made by any of the departments, where such claims were assigned or contracted to be assigned prior to the 1st day of April, 1861, to the creditors of such contractors, loyal citizens of loyal States, in payment of debts incurred prior to the 1st day of March, 1861."

Loyalty is not essential to obtain a duplicate or triplicate of a warrant lost or destroyed.

Warrant Lost or Destroyed.

By act of June 23, 1860, provision is made for issuance of a duplicate warrant in place of one lost or destroyed. This provision is embodied in section 2441, Revised Statutes, as follows:

"Sec. 2441. Whenever it appears that any certificate or warrant, issued in pursuance of any law granting bounty-land, has been lost or destroyed, whether the same has been sold and assigned by the warrantee or not, the Secretary of the Interior is required to cause a new certificate or warrant of like tenor to be issued in lieu thereof; which new certificate or warrant may be assigned, located, and patented in like manner as other certificates or warrants for bounty-land are now authorized by law to be assigned, located, and patented; and in all cases where warrants

have been, or may be, reissued, the original warrant, in whosever hands it may be, shall be deemed and held to be null and void, and the assignment thereof, if any there be, fraudulent; and no patent shall ever issue for any land located therewith, unless such presumption of fraud in the assignment be removed by due proof that the same was executed by the warrantee in good faith and for a valuable consideration.

If a duplicate be lost or destroyed, a triplicate may be obtained.

Warrant Erroneously Issued.

If a warrant be issued through fraud or mistake to a person not entitled, the rights of the person legally entitled are not affected; and if such a warrant, issued through fraud or mistake, or an original warrant which was lost, and for which a duplicate has been issued, comes into the hands of an innocent purchaser, his rights therein will be protected.

Locating Under Warrant.

The following is a provision of the act of September 28, 1850, as embodied in section 2437, Revised Statutes:

"Sec. 2437. It shall be the duty of the Commissioner of the General Land Office, under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located, free of expense, any warrant which the holder may transmit to the General Land Office for that purpose,

in such State or land-district as the holder or warrantee may designate, and upon good farming-land, so far as the same can be ascertained from the maps, plats, and field-notes of the surveyor, or from any other information in the possession of the local office, and, upon the location being made, the Secretary shall cause a patent to be transmitted to such warrantee or holder."

A provision of the act of March 22, 1852, is embodied in section 2415, Revised Statutes, as follows:

"Sec. 2415. The warrants which have been or may hereafter be issued in pursuance of law may be located according to the legal subdivisions of the public lands in one body upon any lands of the United States subject to private entry at the time of such location at the minimum price. When such warrant is located on lands which are subject to entry at a greater minimum than $1.25 per acre, the locator shall pay to the United States in cash the difference between the value of such warrant at $1.25 per acre and the tract of land located on. But where such tract is rated at $1.25 per acre, and does not exceed the area specified in the warrant, it must be taken in full satisfaction thereof."

If a person, after obtaining a warrant, does not himself wish to locate under it, he may assign it to some one else; or, after making a valid location, he may assign. This is in accordance with provisions of the acts of March 22, 1852, and June 3, 1858, now embodied in section 2414, Revised Statutes, as follows:

"Sec. 2414. All warrants for military bounty-lands which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are declared to be assignable by deed or instrument of writing made and executed according to such form and pursuant to such regulations as may be prescribed by the Commissioner of the General Land-Office, so as to vest the assignee with all the rights of the original owner of the warrant or location."

Assignment Before Issue Void.

Provisions of the acts of February 11, 1847, and September 28, 1850, are embodied in section 2436, Revised Statutes, as follows:

"Sec. 2436. All sales, mortgages, letters of attorney, or other instruments of writing, going to affect the title or claim to any warrant issued, or to be issued, or any land granted, or to be granted, under the preceding provisions of this chapter, made or executed prior to the issue of such warrant, shall be null and void to all intents and purposes whatsoever; nor shall such warrant, or the land obtained thereby, be in anywise affected by, or charged with, or subject to, the payment of any debt or claim incurred by any officer or soldier, prior to the issuing of the patent."

Treasury Scrip in Lieu of Land-Warrant.

Under the Mexican war act of February 11, 1847, persons entitled thereunder to a warrant for

160 acres might receive instead, if they chose, Treasury scrip for $100 redeemable at the pleasure of the Government, and bearing interest at 6 per cent per annum, payable semi-annually; and those entitled to 40 acres, scrip for $25, bearing the same interest. This provision of the law was repealed by the act of March 3, 1849, which provided that no more scrip should be issued after July 1, 1849; that all issued previous to that time should then be paid if presented; that if not presented for payment, interest should cease from and after that date; and that thereafter money should be paid (by certificate) to claimants who preferred to receive it in lieu of the warrant. In the compilation of the Revised Statutes in 1873 this repeal of the scrip provision of the act of February 11, 1847, appears to have been overlooked, and the whole law was re-enacted. But it is unlikely that any person entitled to a warrant worth fully $125 at this time would care to have instead a scrip certificate worth only $100. Persons who have elected to receive the scrip or money certificate instead of a warrant for bounty-land, have thereby relinquished their title to the bounty-land.

CHAPTER XXIV.

BOUNTIES.

Early Legislation—Three-Months Militia Call of April 15, 1861—First Call for Three-Years Volunteers—Three-Years Volunteers Under Act of July 22, 1861—Discharged for Wound in Battle—Discharge for Wound in Line of Duty—Volunteers for Less than Three Years Under Act of July 22, 1861—Veteran Volunteers—Three Years Volunteers Under Call of October 17, 1863. New Companies—Volunteer Enlistments, April 2 to July 17, 1864—Regulars enlisted Before June 25, 1863—Regulars Enlisted from June 25, 1863, to January 5, 1864—Regulars Enlisted from January 6 to April 1, 1864—Enlistments on April 1, 1864—Regulars Enlisting from April 2 to July 17, 1864—Regulars Re-enlisting from April 20 to August 1, 1864—Enlistments After July 17, 1864—U. S. Veteran Volunteers—Marine Corps. Able and Ordinary Seamen—Transfers to Navy—Navy in General—Colored Troops—Drafted Men and Substitutes—Veteran Reserve Corps—Signal Corps—Ordnance Corps—Mississippi Marine Brigade—United States Volunteers—Detailed Duty—Discharge to enlist in Regular Army—Discharge for Promotion—Discharge as Supernumerary—Discharge for Close of War—Discharge for "Expiration of Term of Service"—Military Convict—Absence Without Leave—In Arrest—$25 Advance Bounty—Heirs of Three-Years Volunteers Enlisted Before July 22, 1861—Heirs o Persons Enlisted Under Act of July 4, 1861—Heirs in General—Heirs of Short-Term Volunteers. Heirs of Colored Soldiers and Sailors—Death in Hospital. "Death in Service" Defined—Pennsylvania Reserve Corps. Indian Home Guards—37th Iowa Infantry—Missouri State Militia—3d Arkansas Cavalry—15th and 16th Missouri Cavalry—Bryson's N. C. Mounted Volunteers—California Mountaineers—Not Entitled—Additional Bounty—Official Decisions Final—Deceased Claimant.

Early Legislation.

The resolution of the Continental Congress, dated September 16, 1776, "to provide for the rais-

ing of 88 battalions to serve for the war," (see "Bounty Land,") offered "a money bounty of $20 to each non-commissioned officer or private soldier"; and it appears from the resolution of two days later that before the date of former resolution a "bounty of $10" had been offered.

The act of January 10, 1812, "to raise an additional military force," offered "a bounty of $16" to recruits for a five-years' enlistment.

Three-Months Militia, Call of April 15, 1861.

No bounty was offered, nor has any since been provided for enlistments under this call.

First Call for Three-Years Volunteers.

By proclamation of May 3, 1861, the President called for "42,034 volunteers, to serve for the period of three years unless sooner discharged." General Orders Nos. 15 and 25 of the War Department, dated May 4 and 25, 1861, respectively, provided that besides certain pay and allowances "every volunteer, non-commissioned officer, private, musician and artificer who enters the service under this plan shall be paid * * when honorably discharged * * the sum of $100." It will be noted that there was no condition as to length of service. Notwithstanding that the proclamation and the War Department orders received legal effect from the act of August 6, 1861, persons enlisted thereunder were

regarded as subject to the provisions of the act of July 22, 1861, until the passage of the act of April 22, 1872, which provided that all three-years volunteers enlisted into the military service before July 22, 1861, and actually mustered into service before August 6, 1861, should be entitled to the bounty, if honorably discharged.

The latest provision for three-years volunteers enlisted before July 22, 1861, is the act of July 20, 1888, which removes the requirement that thesoldier must have been actually mustered into the United States service before August 6, 1861. It provides:

"That the act entitled 'An act in relation to bounties,' approved April 22, 1872, be amended by striking out the words 'before August 6, 1861'; and said act, as hereby amended, shall have full force and effect from April 22, 1872.

"Sec. 2. That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to reconsider the claims of all soldiers and their heirs who may have been denied the bounty of $100 granted by the act of April 22, 1872 under any construction of said act which has been modified or rescinded, and such claims shall, if found correct and just, be allowed and paid, provided the soldiers were enrolled or enlisted for three years prior to July 22, 1861, under the proclamation of the President of the United States of May 3, 1861, and the orders of the War Department issued in pursuance thereof, and were actually mustered into the service of the United States and honorably discharged."

Those enlisted for "during the war," before the date mentioned, are regarded as entitled; and a discharge to accept promotion is now regarded as a sufficient "discharge" within the meaning of the law.

The above is not an additional bounty. It is an original bounty due only to those three-years volunteers enlisted before July 22, 1861, who did not receive and are not entitled to receive the original bounty of $100 allowed by the act of July 22, 1861.

Three-Years Volunteers Under Act of July 22, 1861.

The act of July 22, 1861, authorized the acceptance of "volunteers * * not exceeding 500,000," to be enlisted for terms "not exceeding three years nor less than six months," and provided that "every volunteer, non-commissioned officer, private, musician, and artificer, who enters the service of the United States under this act, shall be paid * * if he shall have served for a period of two years, or during the war, if sooner ended, the sum of $100."

This law covered all volunteer three-years enlistments from July 22, 1861, to December 23, 1863, inclusive, into new organizations, and from July 22, 1861, to October 23, 1863, inclusive, into old organizations.

Discharge for Wound in Battle.

The act of March 3, 1863, provided:

"That every non-commissioned officer, private, or other person who has been or shall hereafter be discharged from the Army of the United States within two years from the date of their enlistment, by reason of wounds received in battle, shall be entitled to receive the same bounty as is granted or may be granted to the same classes of persons who are discharged after a service of two years; and all acts and parts of acts inconsistent with this are hereby repealed."

Discharge for Wound in Line of Duty.

The act of March 3, 1865, provides:

"Sec. 4. And be it further enacted, That every non-commissioned officer, private, or other person, who has been, or shall hereafter be, discharged from the Army of the United States by reason of wounds received in battle, on skirmish, on picket, or in action, or in the line of duty, shall be entitled to receive the same bounty as if he had served out his full term; and all acts and parts of acts inconsistent with this are hereby repealed."

The law does not in terms declare anything else than "wounds" to be such a disabling cause of discharge as gives title to bounty; but the word is understood in the sense of injuries, hurts, or other damage, as contradistinguished from disease or sickness. Frostbite, if it causes the actual loss, or loss of use, of a member of the body; deafness, varicocele and orchitis, if caused by ex-

ternal violence; hernia; injury by a stroke of lightning; lameness produced by a sprain of the back, and sunstroke, are among the causes of disability regarded as "wounds" within the meaning of the law.

The soldier must have been actually discharged by reason of the "wound." If discharged for two or more causes, one of which was a "wound," the wound of itself must have been sufficient to justify a discharge, in order to give title to bounty. As, for instance, in case a man were discharged because of loss of right thumb, and rheumatism, the loss of the thumb of itself being regarded as sufficient cause for discharge, he would be entitled to the bounty. If discharged for a self-inflicted "wound," or for one incurred in service under a previous enlistment, he is not entitled. Nor is he entitled if discharged for any disability which existed before his enlistment into the service, unless he had served two years. The bounty is paid in such cases on the principle that the cause of disability, though existing at the time of enlistment, did not then disqualify him for the duties of a soldier, and hence that the disability, i. e., the disabled condition, cannot be said to have existed at the time of the enlistment.

Volunteers for Less than Three Years Under Act of July 25, 1861.

The act of July 22, 1861, provided that:

"All provisions of law applicable to three years

volunteers shall apply to two-years volunteers, and to all volunteers who have been, or may be, accepted into the service of the United States for a period not less than six months in the same manner as if such volunteers were specially named."

The two-years volunteers of 1861, mainly New York troops, are entitled to the full bounty if honorably discharged after 23 months' service, or after a less period for wound or injury incurred in line of duty.

Volunteers for less than two years, but not less than six months, are now regarded as entitled to the bounty, if honorably discharged because of wound received in battle, or after April 28, 1865, because of their services being no longer required, the war being over. The nine-months militia enlisted under the call of August 4, 1862, and six-months militia enlisted under the call of June 15, 1863, are not entitled; nor are troops, such as the one-year Kentucky volunteers under the act of February 7, 1863, enlisted under some special law excepting them from the bounty laws.

Veteran Volunteers.

The original provision for the enlistment of veteran volunteers was General Order No. 191 of the War Department, dated June 25, 1863, which provided:

"In order to increase the armies now in the field, volunteer infantry, cavalry, and artillery may be enlisted, at any time within 90 days from this date, in the respective States, under the regulations hereinafter mentioned. The volunteers so enlisted, and such of the three-years troops now in the field as may re-enlist in accordance with the provisions of this order, will constitute a force to be designated 'Veteran Volunteers.' The regulations for enlisting this force are as follows:

"I. The period of service for the enlistments and re-enlistments above mentioned shall be for three years or during the war.

"II. All able-bodied men, between the ages of 18 and 45 years, who have heretofore been enlisted, and have served for not less than nine months, and can pass the examination required by the mustering regulations of the United States, may be enlisted under this order as veteran volunteers, in accordance with the provisions hereinafter set forth.

"III. Every volunteer enlisted and mustered into service as a veteran under this order shall be entitled to receive from the United States one month's pay in advance and a bounty and premium of $402, to be paid as follows:

1. Upon being mustered into service, he shall be paid one month's pay in advance	$13.00
First installment of bounty	25.00
Premium	2.00
Total payment on muster	$40.00
2. At the first regular pay-day, or two months after muster-in, an additional installment of bounty will be paid	$50.00
3. At the first regular pay-day after six months' service he shall be paid an additional installment	50.00
4. At the first regular pay-day after the end of the first year's service an additional installment of bounty will be paid	50.0

5. At the first regular pay-day after 18 months' service an additional installment of bounty will be paid.....	50.00
6. At the first regular pay-day after two years' service an additional installment of bounty will be paid.....	50.00
7. At the first regular pay-day after two and a half years' service an additional installment of bounty will be paid,	50.00
8. At the expiration of three years' service the remainder of the bounty will be paid.....	75.00

"IV. If the Government shall not require these troops for the full period of three years, and they shall be mustered honorably out of service before the expiration of their term of enlistment, they shall receive, upon being mustered out, the whole amount of bounty remaining unpaid, the same as if the full term had been served. The legal heirs of volunteers who die in service shall be entitled to receive the whole bounty remaining unpaid at the time of the soldier's death.

* * * * * *

"VII. Volunteers or militia now in service whose term of service will expire within 90 days, and who shall then have been in service at least nine months, shall be entitled to the aforesaid bounty and premium of $402, provided they re-enlist before the expiration of their present term for three years or the war; and said bounty and premium shall be paid in the manner herein provided for other troops re-entering the service. The new term will commence from date of re-enlistment.

"VIII. After the expiration of 90 days from this date, volunteers serving in three-years organizations, who may re-enlist for three years or the war, shall be entitled to the aforesaid bounty and premium of $402, to be paid in the manner herein

provided for other troops re-entering the service. The new term will commence from date of re-enlistment.

* * * * * *

"X. As soon after the expiration of their original term of enlistment as the exigencies of the service will permit, a furlough of 30 days will be granted to men who may re-enlist in accordance with the provisions of this order."

The original order was not retroactive, but its provisions were extended by General Order No. 216 of the War Department, dated July 14, 1863, as follows:

"I. All able-bodied men, between the ages of 18 and 45 years, who have heretofore been enlisted and have served for not less than nine months, have been honorably discharged, and can pass the examination required by the mustering regulations of the United States, may be enlisted in any regiment they choose, new or old; and, when mustered into the United States service, will be entitled to all the benefits provided by General Orders No. 191 for recruiting 'veteran volunteers.'

"A regiment, battalion, or company shall bear the title of 'veteran' only in case at least one-half its numbers, at the time of muster into United States service, are 'veteran volunteers.'

"II. The benefits provided by General Orders 191 for veteran volunteers will be extended to men who re-enlisted prior to the promulgation of that order, provided they have fulfilled the conditions therein set forth."

General Order No. 305, dated September 11, 1863, further amended the original order as to the re-enlistment of volunteers serving under three-years enlistments. It provided:

"Par. VIII of General Orders No. 191, from this office, relative to recruiting veteran volunteers, is hereby amended to read as follows:

"After the expiration of 90 days from this date (June 25), volunteers serving in three-years organizations, who may re-enlist for three years or the war in the companies or regiments to which they now belong, and who may have at the date of re-enlistment less than one year to serve, shall be entitled to the aforesaid bounty and premium of $402, to be paid in the manner herein provided for other troops re-entering the service.

"The new term will commence from date of re-enlistment."

General Order No. 324, dated September 28, 1863, further amended the original order, extending the time for re-enlistments as veteran volunteers and increasing the amount of the first installment of the bounty. It is as follows:

"1. The time for enlisting veterans volunteers under the provisions of General Orders No. 191, current series from this office, is hereby extended to December 1, 1863. This extension will not be considered as securing rank and pay to officers after August 25, the limit fixed in paragraph VI of the said order.

"2. Under paragraph III of the aforesaid order, the first installment of bounty [section 1] is hereby increased to $60, thus making the 'total pay-

ment on muster' $75; and the 'remainder of the bounty' [section 8], at the expiration of three years' service, is reduced to $40."

General Order No. 387, dated December 1, 1863, further extended the time for enlisting veteran volunteers to January 5, 1864. The joint resolution of December 23, 1863, the first confirmation of the veteran bounty by Congress, provided also:

"That no bounties, except such as are now provided by law, shall be paid to any persons enlisted after the 5th day of January next."

The joint resolution of January 13, 1864, extended the time to March 1, 1864, and that of March 3, 1864, made a final extension to April 1, 1864.

The War Department, after having promulgated General Order 216, as above, arbitrarily ruled a year or so later that the provisions of the original order (No. 191, dated June 25, 1863) should not apply to enlistments or re-enlistments made before May 1, 1863, which limitation was in 1868 changed to January 1, 1863. The legality of this ruling remained unquestioned until in 1882, when it was decided by the Treasury Department that there having been no authority of law for the payment of the bounty offered by the original order, and the War Department having failed to fix any limitation until after the passage of the joint resolutions of December 23, 1863, and Janu-

ary 13, 1864, and Congress not having then or at any time subsequently imposed any such restriction, there was therefore no authority of law for the restriction imposed by the War Department after the passage of the joint resolutions referred to, and hence that such restriction was null and of no legal effect.

It has since been decided that the "nine months previous service" need not have been service for nine consecutive months, but that it is sufficient if the sum of several different previous services be nine months. Nor is it necessary that this previous service shall have been rendered wholly or in part during the war of the rebellion; it may have been rendered, for instance, in the Mexican War, or at any other time before the war of the rebellion.

The full bounty is payable if the soldier was honorably discharged after serving the full term of re-enlistment, or after serving two years, or was honorably discharged for wound or injury incurred in line of duty, or because of the close of the war.

Three-Years Volunteers Under Call of October 17, 1863.

By proclamation of October 17, 1863, the President called for 300,000 volunteers "to serve for three years or the war, not, however, exceeding three years."

By a circular of the Provost-Marshal-General's Office, War Department, dated October 24, 1863, which received the authority of law by the joint resolution of December 23, 1863, all volunteer recruits enlisting for three years or during the war after October 23, 1863, in old organizations (i. e., organizations already in the field), were entitled to a bounty of $300, if they served the full term of enlistment, or served two years, or were discharged before two-years' service because of the close of the war, or because of wound or injury incurred in service and line of duty.

Circular No. 89 of the Provost-Marshal-General, dated November 3, 1863, provided:

"The following regulations are established, with the approval of the Secretary of War, and will govern mustering and disbursing officers in their payments of advance bounty, premium, and advance pay to recruits (not veterans) enlisted by recruiting officers, to serve for three years or the war, in old regiments now organized, whose terms of service expire in 1864 and 1865:

"I. To all recruits enlisting as above required there will be paid one month's pay in advance, and, in addition, a bounty and premium amounting to $302, as follows, viz:

On being mustered into United States service, under this authority, and before leaving the recruiting station or depot to join his company or regiment, the recruit shall receive one month's advance pay	$13.00
First installment of bounty	60.00
Premium	2.00
Total pay before joining his regiment	$75.00
At the first regular pay-day, or two months after muster-in, an additional installment of bounty will be paid	40.00

At the first regular pay-day after six months' service, an additional installment of bounty will be paid.....	40.00
At the first regular pay-day after the end of the first year's service, an additional installment of bounty will be paid,	40.00
At the first regular pay-day after eighteen months' service an additional installment of bounty will be paid..	40.00
At the first regular pay-day after two years' service, an additional installment of bounty will be paid.....	40.00
At the expiration of three years' service, or to any soldier enlisting under this authority, who may be honorably discharged after two years' service, the remainder of the bounty will be paid.....	40.00

"II. If the Government shall not require these troops for the full period of three years, and they shall be mustered honorably out of the service before the expiration of their terms of enlistment, they shall receive on being mustered out, the whole amount of bounty remaining unpaid the same as if the full term had been served.

"III. The legal heirs of soldiers who die in service shall be entitled to receive the whole bounty remaining unpaid at the time of the soldier's death."

A circular telegram of the War Department, dated December 24, 1863, provided:

"Bounties will be paid in accordance with existing orders to recruits who enlist before January 5, inclusive, for any three-years organization in service, or authorized by the War Department and in process of completion."

Thus, volunteer recruits to new regiments who enlisted after December 23, 1863, become entitled to $300 bounty on the same terms and conditions as recruits to old regiments.

By authority of the joint resolutions of Decem-

ber 23, 1863, January 13, 1864, and March 3, 1864, already referred to (see "Veteran Volunteers") this bounty was paid for all volunteer enlistments, for three years or the war, into the military service before April 2, 1864.

The $300 recruit bounty was exceptionally allowed to the following organizations:

Old Illinois regiments allowed from September 23, 1863; 17th Ill. Cav. allowed prior to December 24, 1863, but not prior to October 24, 1863.

Old Indiana regiments allowed from September 23, 1863; 9th, 10th, 11th, 12th, and 13th Ind Cav., 120th, 123d, 124th, 128th, 129th, and 130th Ind. Inf. allowed after September 14, 1863.

Second Me. Cav., 29th and 30th Maine Inf., allowed prior to December 24, but not prior to October 24, 1863.

Potomac Home Brigade, Maryland Volunteers, allowed after October 24, 1863.

Fourth Mass. Cav. allowed after October 24. 1863.

Second N. Y. Vet. Cav., 13th, 15th, 18th, 21st, and 22d N. Y. Cav., and 14th and 16th N. Y. Heavy Artillery allowed after December 2, 1863.

Old Ohio regiments and 9th and 12th Ohio Cav. allowed from September 23, 1863.

Third Vt. Light Battery and 17th Vt. Inf. allowed prior to October 24, 1863.

New Companies.

New companies formed in old organizations are no longer regarded as having been "new organi-

zations"; so that three-years volunteer recruits enlisted after October 23, 1863, but before December 24, 1863, and assigned to new companies in old regiments are entitled to this bounty instead of the $100 bounty under the act of July 22, 1861.

Volunteer Enlistments April 2 to July 17, 1864.

Volunteer enlistments from April 2 to July 17, 1864, are subject to the act of July 22, 1861, and its amendments, as to bounty. (See page 275.)

Regulars Enlisted Before June 25, 1863.

The act of July 29, 1861, provides:

"Sec. 5. And be it further enacted, That the men enlisted in the regular forces, after the 1st day of July, 1861, shall be entitled to the same bounties, in every respect, as those allowed or to be allowed to the men of the volunteer forces."

Those who enlisted on July 1, 1861, are held to be entitled.

Regulars Enlisted from June 25, 1863, to January 5, 1864.

General Order No. 190 of the War Department, dated June 25, 1863, provided:

"Ordered, That all men enlisting in the Regular Army for five years' service within 90 days from this date shall receive premium, advance pay, and bounty, of $402, as follows, viz:

Premium paid on enlistment	$ 2.00
Advance pay, first payment after muster	13.00
Advance bounty, paid at depot after being accepted	25.00
Total	$40.00

Bounty to be paid at the second regular pay-day after enlistment	$50.00
Bounty to be paid at first pay-day after eight months' service	50.00
Bounty to be paid at first pay-day after 12 months' service,	50.00
Bounty to be paid at first pay-day after two years' service,	50.00
Bounty to be paid at first pay-day after three years' service,	50.00
Bounty to be paid at first pay-day after four years' service,	50.00
Bounty to be paid at expiration of service	75.00

General Order No. 338, dated October 16, 1863, extended the time to December 1, 1863, and General Order No. 386, of December 1, 1863, made a further extension. The joint resolution of December 23, 1863, already referred to, gave authority of law to these orders and continued them in force till January 5, 1864, inclusive.

Note, however, that the enlistments must have been for five years, to entitle to the bounty, which was payable at honorable discharge after two years' service, or after a less period for wound or injury incurred in service and line of duty.

Regulars Enlisted from January 6 to April 1 1864.

The joint resolution of January 13, 1864, provided:

"That the bounties heretofore paid, under regulations and orders from the War Department, to men enlisting in the regular or volunteer forces

of the United States for three years or during the war, shall continue to be paid from the 5th day of January, 1864, until the 1st day of March next, anything in the act [joint resolution] approved December 23, 1863, to the contrary notwithstanding."

General Order No. 25, dated January 18, 1864, provided:

"All enlisted men now in the Regular Army, whose terms of service expire during the present year, are hereby permitted to re-enlist at any time before the 1st of March, 1864. On re-enlisting, they will be entitled to the extra bounty of $300, authorized by General Orders No. 20, War Department, Adjutant-General's Office, Washington, D. C., January 14, 1864, [promulgating the joint resolution of January 13, 1864, above.]"

General Order No. 66, dated February 20, 1864. provided:

"All soldiers enlisted or re-enlisted into the Regular Army for the period of three years under the provisions of the joint resolution of January 13, 1864, and General Orders No. 25, of 1864, are entitled to a bounty of $402, to be paid as follows:

1. Upon enlistment, they shall be paid one month's pay in advance	$13.00
First installment of bounty	25.00
Premium	2.00
Total on settlement	$40.00
2. At the first regular pay-day after two months' service, an additional installment of bounty will be paid	$50.00
3. At the first regular pay-day after six months' service, an additional installment of bounty will be paid	50.00
4. At the first regular pay-day after the end of the first year's service, an additional installment of bounty will be paid	50.00

5. At the first regular pay-day after 18 months' service, an additional installment of bounty will be paid..... 50.00
6. At the first regular pay-day after two years' service, an additional installment of bounty will be paid..... 50.00
7. At the first regular pay-day after two and a half years' service, an additional installment of bounty will be paid, 50.00
8. At the expiration of three years' service, the remainder of the bounty will be paid..... 75.00

The joint resolution of March 3, 1864, continued this bounty in force to April 1, 1864. Note that it was allowed for enlistments or re-enlistments for three years, and was payable at honorable discharge after two-years' service, or after a less period for wound or injury incurred in service and line of duty

Enlistments on April 1, 1864.

Enlistments on April 1, 1864, were, until comparatively recently, regarded the same as though made after that date, thus denying to many persons bounties as above, to which they are now entitled.

Regulars Enlisting from April 2 to July 17, 1864.

Regulars enlisting from April 2 to July 17, 1864, were entitled to the same bounty, and on the same terms and conditions, as those enlisting before June 25, 1863. (See page 288.)

Regulars Re-enlisting from June 20 to August 1, 1864.

The act of June 20, 1864, provided:

"Sec. 3. And be it further enacted, That all non-commissioned officers and privates in the Regular Army, serving under enlistments made prior to July 22, 1861, shall have the privilege of

re-enlisting, for the term of three years, in their respective organizations, until the 1st day of August next; and all such non-commissioned officers and privates so re-enlisting shall be entitled to the bounties mentioned in the joint resolution of Congress approved January 15, 1864."

Thus, the $400 was allowed for three-years enlistments in the Regular Army from June 20 to August 1, 1864, inclusive; the bounty being payable in installments as indicated by General Order No. 66, dated February 20, 1864, above; and the full bounty being payable at honorable discharge after two years' service, or after a less period for wound or injury incurred in service and line of duty

Enlistments After July 17, 1864.

The act of July 4, 1864, provides:

"That the President of the United States may, at his discretion, at any time hereafter, call for any number of men as volunteers, for the respective terms of one, two, and three years, for military service; * * * and every volunteer who is accepted and mustered into the service for a term of one year, unless sooner discharged, shall receive and be paid by the United States a bounty of $100; and if for a term of two years, unless sooner discharged, a bounty of $200; and if for a term of three years, unless sooner discharged, a bounty of $300; one-third of which bounty shall be paid to the soldier at the time of his being mustered into the service, one-

third at the expiration of one-half of his term of service, and one-third at the expiration of his term of service; and in case of his death while in service, the residue of his bounty unpaid shall be paid to his widow, if he shall have left a widow; if not, to his children, or, if there be none, to his mother, if she be a widow."

Circular 68 of the War Department, dated August 26, 1864, provides:

"The following decision of the Second Comptroller of the Treasury is published for the information and guidance of all concerned:

* * * "The bounties provided by this last-mentioned act (approved July 4, 1864, for enrolling and calling out the National forces), though referred in terms to volunteers alone, who shall enlist under calls which the President is authorized to make, are yet made applicable to men enlisted in the regular forces, by the 5th section, act July 29, 1861, which enacts that they shall be entitled to the same bounties, in every respect, as those allowed to volunteers.

"The bounties thus authorized shall be paid in installments, as follows:

"On being duly accepted at depot..... $100
"On the expiration of 18 months' service... $100
"On the expiration of the full term..... $100

The above act was applied to all enlistments after July 17, 1864, in the volunteer service for one, two, and three years, or in the regular service for three years; and was terminated, as to the volunteer service, on May 1, 1865, and as to regu-

lar service, on July 1, 1865, when bounties ceased.

The full bounty was payable if the soldier served the full term of enlistment, or was discharged because of wound or injury incurred in service and line of duty. If discharged because of the close of the war, or because of his services being no longer required, he was entitled only to the accrued installments of the bounty.

U. S. Veteran Volunteers.

General Order No. 287, dated November 28, 1864, provided:

"I. That an army corps, to consist of not less than 20,000 infantry, and enlisted for not less than one year, to be designated the First Corps, shall be organized in the District of Columbia, commencing the organization on the 1st day of December, 1864, and continuing until the 1st day of January next. The privates to consist only of able-bodied men who have served honorably not less than two years, and therefore not subject to draft; the officers to be commissioned from such as have honorably served not less than two years.

"II. Recruits will be furnished transportation to Washington; will be credited to the district in which they or their families are domiciled, and will be paid a special bounty of $300 from the substitute fund upon being mustered into service. Each recruit who preserves his arms to the end of his term, may retain them as his own upon being honorably discharged from service.

"III. Details of organization will be prescribed by the Adjutant-General. The heads of bureaus will detail competent officers for the prompt examination and organization, arming, equipping, and supplying the corps.

"IV. Major-General Hancock is assigned to the command of this corps, headquarters at Washington."

Soldiers who enlisted in Hancock's Corps, as above, between December 1, 1864, and January 1, 1865, for not less than one year, were entitled to receive in addition to the bounties otherwise provided, an extra bounty of $300 in advance. The benefits of this order were not extended beyond January 1, 1865. Soldiers who enlisted, as above, subsequent to January 1, 1865, are not entitled to this extra bounty.

Marine Corps.

Through misconception of law on the part of the Navy Department, men enlisting into the marine corps after June 7, 1862, and before July 10, 1863, were promised a bounty of $100, if they served two years. The bounty is paid in all such cases as promised.

Able and Ordinary Seamen.

A joint resolution of February 24, 1864, provided:

"Sec. 2. And be it further resolved, That there shall be paid to each enlisted able or ordinary seaman, hereafter enlisted into the naval serv-

ice, an advance of three months' pay, as a bounty to be refunded to the Treasury from any prize money to which such enlisted man may be entitled."

Transfers to Navy.

The act of February 24, 1864, provided:

"Sec. 7. And be it further enacted, That * * any person now in the military service of the United States, who shall furnish satisfactory proof that he is a mariner by vocation, or an able or ordinary seaman, may enlist into the Navy under such rules and regulations as may be prescribed by the President of the United States: Provided, That such enlistments shall not be for less than the unexpired term of his military service, nor for less than one year. And the bounty money which any mariner or seaman, enlisting from the army into the navy, may have received from the United States, or from the State in which he enlisted in the army, shall be deducted from the prize money to which he may become entitled during the time required to complete his military service."

The act of April 6, 1866, provides:

"Sec. 2. And be it further enacted, That so much of the seventh section of the act of Congress approved February 24, 1864, entitled 'An act to amend an act entitled "An act for enrolling and calling out the national forces, and for other purposes," approved March 3, 1863, as provides that the bounty money which any mariner or

seaman enlisting from the army into the navy may have received from the United States, or from the prize money to which he may become entitled during the time required to complete his military service,' be, and the same is hereby, repealed."

The act of July 1, 1864, provides:

"Sec. 1. That any person enlisted in the military service of the United States, who shall apply to the Navy Department to be transferred to the navy or marine corps shall, if his application be approved by the President of the United States, be transferred to the navy or marine corps to serve the residue of his term of enlistment therein, subject to the laws and regulations for the government of the navy: Provided, That such transfer shall not release the transferred person from any indebtedness to the Government, nor, without the consent of the President of the United States, from any penalty incurred for a breach of military law.

"Sec. 2. And be if further enacted, That any seaman or marine, or person who may have served as such, drafted into the military service, may, by order of the President of the United States, be transferred to the naval service, to serve therein, subject to the laws and regulations for the government of the navy, for the term, or residue of the term, for which he was drafted."

A soldier thus enlisted or transferred into the navy or marine corps from the army was en-

titled to the same bounty that he would have been entitled to receive had he continued in the army.

Navy in General.

The act of July 1, 1864, provided:

"Sec. 4. And be it further enacted, That persons hereafter enlisted into the naval service or marine corps during the present war shall be entitled to receive the same bounty as if enlisted in the army."

The above applied to all naval enlistments before July 1, 1865.

The full bounty provided by the act of July 4, 1864, was payable only if they served the full terms of their enlistments, or within not more than three months before their terms of enlistment would have expired, were peremptorily discharged because of their service being no longer required. If discharged because of disability, or for other reasons than as stated, only the accrued installments were payable. Men who, under this act, enlisted into the marine corps for four years, became entitled to the third installment of the bounty of $300 upon the expiration of three years' service.

Colored Troops.

The act of March 3, 1863, provided:

"Sec. 10. And be it further enacted, That the President of the United States be, and he is here-

ly, authorized to cause to be enlisted, for each cook, two under-cooks of African descent, who shall receive for their full compensation $10 per month, and one ration per day; three dollars of said monthly pay may be in clothing."

Under-cooks (colored), whose enlistment was authorized, as above, are not entitled to bounty unless transferred to the ranks, in which case they are entitled to the pay, bounty and other allowances of soldiers from and after the date of such transfer. The period during which they served as under-cooks is not considered in computing the two years' service necessary to entitle them to bounty if discharged for disease. If transferred at a time when installment bounties were payable, they were not under any circumstances entitled to installments which would have accrued during the period antecedent to their transfer, had they been originally enlisted as soldiers.

The act of June 15, 1864, provided:

"Sec. 2. And be it further enacted, That all persons of color who have been or may be mustered into the military service of the United States, shall receive the same uniform, clothing, arms, equipments, rations, medical and hospital attendance, pay and emoluments, other than bounty, as other soldiers or the regular or volunteer forces of the United States of like arm of the service, from and after the 1st day of January, 1864; and that every person of color who shall hereafter be mustered into the service shall re-

ceive such sums in bounty as the President shall order in the different States and parts of the United States, not exceeding $100.

"Sec. 3. And be it further enacted, That all persons enlisted and mustered into service as volunteers under the call, dated October 17, 1863, for 300,000 volunteers, who were at the time of enlistment actually enrolled and subject to draft in the State in which they volunteered, shall receive from the United States the same amount of bounty, without regard to color.

"Sec. 4. And be it further enacted, That all persons of color who were free on April 19, 1861, and who have been enlisted and mustered into the military service of the United States, shall, from the time of their enlistment, be entitled to receive the pay, bounty, and clothing allowed to such persons by the laws existing at the time of their enlistment."

The joint resolution of June 15, 1866, provided:

"That the omission in the muster-rolls of the words 'free on or before April 19, 1861,' shall not deprive any colored soldier of the bounty to which he is entitled, and which is now or may hereafter be withheld by reason of such omission; but where nothing appears on the muster-roll or of record to show that a colored soldier was not a free man at the date aforesaid, under the provision of the fourth section of the 'act making appropriation for the support of the army for the year ending the 30th day of June, 1865,' the presumption shall be that the person was free at the time of his enlistment."

The act of March 3, 1873, as embodied in section 4723, Revised Statutes, provides:

"Sec. 4723. All colored persons who enlisted in the army during the war of the rebellion, and who are now prohibited from receiving bounty and pension on account of being borne on the rolls of their regiments as 'slaves,' shall be placed on the same footing, as to bounty and pension, as though they had not been slaves at the date of their enlistment."

Drafted Men and Substitutes.

The act of March 3, 1863, "for enrolling and calling out the National forces, and for other purposes," provided:

"Sec. 11. That all persons thus enrolled [as subject to draft] shall be subject, for two years after the 1st day of July succeeding the enrollment, to be called into the military service of the United States, and to continue in service during the present rebellion, not, however, exceeding the term of three years; and when called into service shall be placed on the same footing, in all respects, as volunteers for three years, or during the war, including advance pay and bounty as now provided by law."

Under the above enactment, persons drafted, or their substitutes, or the substitutes of persons liable to draft, enlisted for three years, or during the war, after March 3, 1863, and before September 6, 1864, are entitled to a bounty of $100, if they

served the full term of enlistment, or served two years, or were discharged before two years' service, because of wound or injury incurred in service and line of duty. Substitutes enlisted after July 17, 1864, and before September 6, 1864, as representative recruits for persons not liable to draft, are entitled to the same bounty as volunteers enlisted during the same period; but if enlisted as representative recruits for persons who were liable to the draft of September 5, 1864, for the purpose of exempting such persons from that draft, no bounty is due.

It is held that persons who enlisted into the naval service for three years, or during the war, after March 3, 1863, and before September 6, 1864, as substitutes for drafted men, are entitled to a bounty of $100, if they served the full term of enlistment, or served two years, or were discharged before two years' service because of wound or injury incurred in service and line of duty.

Veteran Reserve Corps.

General Order No. 69, dated March 20, 1863, provided for the organization of "Invalid Detachments" at the several United States general hospitals. These were discontinued by General Order No. 173, dated June 11, 1863.

General Order No. 105, dated April 28, 1863, provided for the organization of an Invalid Corps, to

"consist of companies, and if it shall hereafter be thought best, of battalions." (Formation of regiments authorized September 5, 1863.) General Order No. 130, dated May 15, 1863, provided:

"It is further announced that no officer or enlisted man shall be entitled to or receive any * * * premium, or bounty, for enlistment, reenlistment, or service in the Invalid Corps. * * * Claims for * * * bounties which may be due for previous service will not be invalidated by enlistment in the Invalid Corps."

General Order No. 111, dated March 18, 1864, provided:

"The name of the organization authorized by General Orders, No. 105, War Department, 1863, as an 'Invalid Corps,' is hereby changed to that of 'Veteran Reserve Corps.' All orders relating to the Invalid Corps will remain in force, as at present, with respect to the Veteran Reserve Corps."

Signal Corps.

The Signal Corps was, by decision of the War Department, in March, 1864, declared to be an organization of the Regular Army. The members thereof were according entitled to the same bounties as were paid for enlistments into other organizations of the Regular Army.

The War Department held August 12, 1865, that enlisted men of the Signal Corps discharged after the close of the war on account of their service

being no longer required, were entitled to receive the unaccrued installments of bounty in the same way as volunteers.

Ordnance Corps.

No bounties were paid for enlistments or re-enlistments into the Ordnance Corps, but a person transferred therefrom to a fighting arm of the service became entitled if he performed any active field duty.

A soldier transferred to the Ordnance Corps did not thereby forfeit his title to bounty promised him under his contract of enlistment, if the transfer was not made at his own request.

Mississippi Marine Brigade.

The service of members of the Mississippi Marine Brigade which was composed of men who at the time of enlistment therein belonged to volunteer organizations from which they were discharged for the purpose of such enlistment, is regarded as a continuation of their service under their original enlistments, and they are entitled to bounty according to the terms of said enlistments. They are not, however, regarded as having been discharged at the close of the war, "because of their services being no longer required," but "by way of favor," and are thus not entitled to the original bounty of $100, nor to unaccrued installments of the installment bounties.

unless their service before such discharge amounted to more than two years.

United States Volunteers.

No bounty is payable for enlistments into the several regiments of "United States Volunteers," composed of rebel deserters and prisoners-of-war who had taken the oath of allegiance to the United States. But rebel deserters (not prisoners-of-war) who enlisted into Union organizations, for enlistments into which bounty was as a rule payable, are entitled to bounty if the conditions of the law under which bounty is claimed have been fulfilled.

Detailed Duty.

The joint resolution of July 13, 1866, provided:

"That where any enlisted man has been or may be detailed for duty as a clerk, or for any other duty in any executive bureau at headquarters or elsewhere, he shall not by such detail be deprived of any rights to bounties now due or hereafter to become due, but shall be as fully entitled thereto as though no such detail had been made."

Previously it had been held that only the bounty accrued at the date of the detail was payable.

Discharged to Enlist in Regular Army.

Soldiers discharged from the volunteer service, to enable them to enlist into the Regular Army, were not entitled to any bounty, or installments of bounty, for their volunteer service, that had not accrued at the date of their discharge therefrom. Thus a soldier who had enlisted as a volunteer for three years under the act of July 22, 1861, and was discharged before two years' service, to enlist into the Regular Army, would not be entitled to bounty under that law, but would come under the law then governing bounty for enlistments into the Regular Army. If enlisted or transferred into the Regular Army merely to serve the unexpired term of his original enlistment, his service would be regarded as continuous.

Discharged for Promotion.

If discharged before two years' service to accept promotion to the grade of commissioned officer, a soldier is not entitled to any bounty but that actually accrued, unless he come within the provisions of the act of July 20, 1888, his original enlistment being for three years and dating prior to July 22, 1861. (See "First Call for Three-Years Volunteers.")

Discharged as Supernumerary.

If discharged as a supernumerary non-commissioned officer after April 28, 1865, a soldier is

regarded as having been discharged because of his services being no longer required, and is entitled to full bounty accordingly. If discharged as such, previous to that date, his discharge would be regarded as having been "by way of favor," and he would be entitled to no more than the actual bounty, unless he had served two years under his last enlistment.

Discharged for Close of War.

All soldiers discharged because of the "end of the war," or after April 28, 1865, for an equivalent reason, to wit: that their "services are no longer required," are entitled to full bounty, unless enlisted after July 17, 1864.

Discharge for "Expiration of Term of Service."

The act of March 3, 1869, provides:

"That when a soldier's discharge states that he is discharged by reason of 'expiration of term of service,' he shall be held to have completed the full term of his enlistment and entitled to bounty accordingly."

The effect of this law is to entitle to unpaid installments of bounty, men enlisted under the act of July 4, 1864, who were denied full bounty because of their not having served the exact periods for which they enlisted; and to entitle to a bounty

not exceeding $100, to certain men enlisted during 1862-3 into old regiments, to serve during the unexpired terms of such regiments If, however, in any case presented the statement contained in the discharge certificate that the man was discharged because of "expiration of term of service," or the statement therein as to his term of enlistment, be manifestly erroneous, or at variance with matters of record, the Government reserves the right to correct the discharge certificate to accord with the facts

Military Convict

It is held that the time a soldier served as a convict under the sentence of a court-martial must be considered in computing the period of his service for the purpose of bounty, unless by the sentence of the court he was to forfeit all bounty which might thereafter become due him

Absence Without Leave.

The period during which a soldier was "absent without leave" or a "deserter" cannot be considered in computing the period of his service. He is not regarded as "absent without leave," however, while held in arrest by the civil authorities, unless he was convicted. If captured by the enemy while "absent without leave," he is regarded as on duty from and after capture.

In Arrest.

The period during which a soldier was held in arrest by the military authorities is now considered in computing the period of his service, if he was restored to duty without trial, and no record exists showing the cause of his arrest, in such case the presumption of innocence remaining.

$25 Advance Bounty.

The army appropriation act of July 5, 1862, provided:

"Sec. 6. And be it further enacted, That section 5 of the act 'to authorize the employment of volunteers to aid in enforcing the laws and protecting public property,' approved July 22, 1861, and section 5 of the act 'to increase the present military establishment of the United States,' approved July 29, 1861, shall be so construed as to allow $25 of the bounty of $100 therein provided, to be paid immediately after enlistment to every soldier of the volunteer forces hereafter enlisted during the continuance of the existing war."

The act of March 3, 1863, provided:

"Sec. 6. And be it further enacted, That all payments of advance bounty made to enlisted men who have been discharged before serving out the term required by law for its payment in full, shall be allowed in the settlement of the accounts of paymasters at the Treasury; but hereafter, in all such cases, the amount so advanced shall be charged against the enlisted men, unless

the discharge be upon surgeon's certificate for wounds received or sickness incurred since their last enlistment."

This enactment has been construed as authorizing a deduction of $25 in all cases wherein a soldier enlisted prior to July 18, 1864, for a term which entitled him to bounty, received an installment of the same in advance, and was discharged before two years' service for reasons other than the close of the war or disability incurred in service and line of duty subsequent to his last enlistment.

Heirs of Three-Years Volunteers Enlisted Before July 22, 1861.

The "legal heirs" of a soldier enlisted under the President's proclamation of May 3, 1861, were, by General Orders 15 and 25, A. G. O., War Department, dated May 4 and 25, 1861, respectively, to receive the bounty of $100 therein offered, if he died in the service. The bounty was paid the heirs under the provisions of the act of July 22, 1861, if the soldier's death occurred in the service; but if the soldier had died after discharge without having received the bounty, the heirs were not entitled unless the conditions of the act of July 22, 1861, had been fulfilled by the soldier. Even under the act of April 22, 1872, it having in terms made no mention of "heirs," the heirs were held, until 1882, not to be entitled except under

the provisions of the act of July 22, 1861. It was then decided that heirs of soldiers entitled under the law, dying after April 22, 1872, and without having received the bounty, were entitled to receive the same. It is now held that the heirs are entitled without regard to the date of the soldiers' death

Heirs of Persons Enlisted Under Act of July 4, 1864.

The act of July 4, 1864, applying to all military enlistments in the volunteer and regular service after July 14, 1864, provides:

"That * * in case of his death while in service, the residue of his bounty unpaid shall be paid to his widow, if he shall have left a widow; if not, to his children, or, if there be none, to his mother, if she be a widow."

It is immaterial whether the mother was a resident of the United States or not. Only accrued but unpaid installments of bounties under the act of July 4, 1864, are allowed the heirs of persons (enlisted after July 17, 1864,) dying in the naval service

Heirs in General.

The act of July 11, 1862, contains the following provision:

"Provided, That said bounty shall be paid to the following persons, and in the order following,

and to no other person, to wit: first, to the widow of such deceased soldier, if there be one; second, if there be no widow, then to the children of such deceased soldier, share and share alike; third, if such soldier left neither a widow, or child, or children, then, and in that case, such bounty shall be paid to the following persons, provided they be residents of the United States, to wit: first, to his father, or if he shall not be living, or has abandoned the support of his family, then to the mother of such soldier, and if there be neither father nor mother as aforesaid, then such bounty shall be paid to the brothers and sisters of the deceased soldier, resident as aforesaid."

"Sec. 3. And be it further enacted, That that part of the sixth section of the act 'to authorize the employment of volunteers to aid in enforcing the laws and protecting public propetty,' approved July 22, 1861, which secured to the widow, if there be one, and if not, the legal heirs of such volunteers as die or may be killed in service, in addition to all arrears of pay and allowances, a bounty of $100, shall be held to apply to those persons who have enlisted in the regular forces since July 1, 1861, or shall enlist in the regular forces during the year 1862, and be paid to the heirs named in this act; and that the bounties herein provided for shall be paid out of any money appropriated for bounty to volunteers."

The provisions of the above enactment, whether the soldier died in the service, or died after discharge and without receiving bounty to which he was entitled or would now be entitled if living, are applied in the payment of all bounties ex-

cept those offered by the act of July 4, 1864, for enlistments after July 17, 1864. The nearest legal heirs of a brother or sister who survived the soldier, but has since died, are entitled to his or her share. If the soldier died in the service, the heirs are entitled to the full bounty, or if an installment bounty, then to the installments unaccrued, as well as those accrued but unpaid at the date of his death. If he died since discharge, leaving bounty due but unpaid, or bounty has since become due; or if he died in the service, leaving installments of bounty due but unpaid, in default of the prescribed heirs, and heirs of deceased brothers or sisters, the title to the bounty descends to his heirs-at-law.

To be entitled to more than the accrued but unpaid installments of bounty, the soldier having died in the service, a father, mother, or brothers or sisters must have been residents of the United States at the date of his death. A mere temporary residence in a foreign country will not operate as a bar. Heirs resident in the United States at the date of the soldier's death take precedence over those who but for their having been non-residents would have prior title.

If the father were living, but had abandoned the support of the family at the date of the soldier's death, the bounty goes to the mother, or brothers and sisters. Half-brothers and sisters are equally entitled with those of whole blood.

Foster-parents are not entitled, either to the pay or bounty, unless their adoption of the soldier was of such a character that by the laws of the State in which the parties resided he would have been their heir-at-law had he survived them.

The remarriage of the widow of a soldier does not affect her title; but if previous to his death she had dissovled their marriage [relation, so far as she could, by living in open and notorious adultery, she is not entitled, even though no legal divorce had ever been pronounced. Nor is the widow entitled if previous to the soldier's death she had abandoned him and married a second time without a legal separation, and after having thus committed bigamy, lived in a state of adultery. Children of the soldier are entitled without regard to their age. Their title is not affected by their being illegitimate, if they were recognized and maintained by the soldier as his children, or were adjudged by a competent court to be his children. Heirs, otherwise entitled, but disloyal to the General Government during the war have no title under existing law. The loyal heirs, if any, are entitled to the bounty, as if no other heirs had survived the soldier.

Heirs of Short-Term Volunteers.

The act of March 3, 1865, provides:

"Sec. 11. And be it further enacted, That the bounty of $100, provided by present laws to be

paid to the heirs of volunteers killed in battle, shall be extended to the widow, if living, or if she be dead, to the children of any volunteer who shall have been or may be killed in the service, whether he shall have enlisted for two years or for a less period."

The above enactment is now regarded as entitling to a bounty of $100 the widow or children of every volunteer (as distinguished from regulars, substitutes and drafted men) enlisted for less than two years, as, for three months, 100 days, etc., and dying in the military service during the war of the rebellion. Formerly it was held that there were no volunteers for less than two years until after July 17, 1864, when one-year volunteers were enlisted.

The heirs of those enlisted for less than two years, but not less than six months, under the act of July 22, 1861, are entitled in the order as prescribed by the act of July 11, 1862.

Heirs of Colored Soldiers and Sailors.

The joint resolution of March 3, 1865, as embodied in section 2037, Revised Statutes, is applicable to bounty claims, and provides:

"Sec. 2037. In determining who is the wife or child of any colored soldier, within the meaning of this title, evidence that the soldier and the woman claimed to be his wife cohabited or associated as husband and wife, and so continued to cohabit or associate at the time of enlistment,

or evidence that a form of marriage, whether such marriage was authorized or recognized by law or not, was entered into by them, and that the parties thereafter lived together as husband and wife, and so continued to live together at the time of the enlistment, shall be deemed sufficient proof of marriage; and the children born of any such marriage shall be taken to be the children embraced within the provisions of this title, whether such marriage was or was not dissolved at the time of the enlistment."

The act of March 3, 1873, which placed upon an equal footing with other colored soldiers all those who had previously been denied bounty (and pensions) because of their being borne upon the rolls of their companies as "slaves," was, until 1876, held not to include heirs within its provisions. It was also held, until 1876, that bounty and arrears of pay should not be paid to heirs of colored soldiers more remote than brothers and sisters, if at the time of the soldier's death the claimants resided in States in which slavery existed in 1861.

Death in Hospital.

The act of July 2, 1864, provides:

"Sec. 3. And be it further enacted, That when a soldier sick in hospital shall have been discharged, or shall be discharged, from the military service, but shall be unable to leave, or to avail himself of his discharge in consequence

of sickness or of wounds, and shall subsequently die in such hospital, he shall be deemed to have died in the military service, so far as relates to bounties."

"Death in Service" Defined.

Death in service from injuries received either in attempts to desert or in mutiny are not regarded as having occurred "in service" within the meaning of the bounty laws; but death from dissipation, as the excessive use of intoxicants, is regarded as occurring "in service," the person not having in that case intentionally sought to separate himself from the service.

Pennsylvania Reserve Corps.

In computing the period of service of members of the Pennsylvania Reserve Corps, their service is regarded as commencing with the date of their muster into State service.

Indian Home Guards.

The joint resolution of June 18, 1866, provides:

"That the Secretary of War be, and he is hereby, authorized and required to cause to be paid to the enlisted men of the first, second, and third Indian regiments [known as Indian Home Guards] the bounty of $100, under the same regulations and restrictions as now determine the payment of bounty to other volunteers in the service of the United States."

37th Iowa Infantry.

The act of July 3, 1866, provides:

"That there shall be paid to the members of the 37th regiment of Iowa volunteer infantry the same bounty provided by law, or which may hereafter be provided by law, to soldiers enlisted into the volunteer forces of the United States during the year 1862; and in case any of the members of said regiment are dead, or may die before the payment of said bounty, the same shall be paid to their representatives in the same order provided by law for the payment of bounty in other cases."

Missouri State Militia.

The joint resolution of July 13, 1868, "placing certain troops of Missouri on an equal footing with others as to bounties," provides:

"That the troops recognized in an act entitled 'An act making appropriations for completing the defenses of Washington, and for other purposes,' approved February 13, 1862, be, and are hereby, considered as placed on an equal footing with the volunteers as to bounties, and that all laws relating to bounties be applicable to them as to other volunteers."

The above resolution places the three-years Missouri State Militia, enlisted under General Order No. 96 of the War Department, dated November 7, 1861, on the same footing with other volunteers as to bounty.

Third Arkansas Cavalry.

The act of July 14, 1870, provides:

"That the same bounty be, and is hereby, granted the enlisted men of the 3d Arkansas Cavalry, who were mustered out of the service on the 22d day of May, 1865, as is allowed all other soldiers enlisted for three years or during the war."

Fifteenth and Sixteenth Missouri Cavalry.

The act of June 16, 1880, provides:

"That the proper accounting officers of the Treasury be, and they hereby are, directed to pay bounty to the enlisted men of the 15th and 16th Missouri Cavalry volunteers who served during the late rebellion, as follows, to wit:

"To those who served the full period of one year, or more, the sum of $100; to those who served the full period of six months, but less than one year, the sum of $66.66; to those who served a less period than six months. the sum of 33.33.

"Sec. 2. That in case of the death of the soldier, who if living would be entitled under the first section of this act, then the said sum or sums that would be due to said soldier if living shall be paid to his widow; and if there be no widow, then to his child or children; and if there be none, then to his mother if she be a widow. And so much money as may be necessary to carry this law into effect is hereby appropriated out of any money in the Treasury not otherwise appropriated."

Bryson's North Carolina Mounted Volunteers.

The members of Captain Bryson's company of mounted volunteers of Cherokee County, N. C., are regarded as upon the same footing as three-years volunteers and those who served until May 15, 1865, as having been mustered out because of their services being no longer required, and are entitled to bounty accordingly

California Mountaineers.

Under a recent decision the several battalions of California Mountaineers serving during the war of the rebellion are placed upon the same footing with other volunteers as to bounty.

Not Entitled.

Commissioned officers are not entitled to bounty for their services as such.

Medical cadets, whose enlistment was authorized by the act of August 3, 1861, are not entitled to any bounty.

Veterinary surgeons appointed under the act of March 3, 1863, were by the decision of the Treasury Department on June 15, 1863, declared not to be enlisted men, and hence not entitled to bounty for their services.

Additional Bounty.

The act of July 28, 1866, providing additional bounties of $100 and $50 in certain cases, ex-

pired by limitation on July 1, 1880. Claims for these bounties, to be valid, must have been filed in the Treasury Department before that date. Every soldier who enlisted under the act of July 22, 1861, for not less than two years, and after two years' service was discharged for promotion as a commissioned officer, is now regarded as entitled to $50 "additional bounty," if he has received, or is entitled to receive, no other bounty greater than $100, and if he filed an application for "additional bounty" before July 1, 1880.

Official Decisions Final.

The act of March 30, 1868, as embodied in section 191, Revised Statutes, provides:

"Sec. 191. The ballances which may from time to time be stated by the Auditor and certified to the heads of Departments by the Commissioner of Customs, or the Comptrollers of the Treasury, upon the settlement of public accounts, shall not be subject to change or modified by the heads of Departments, but shall be conclusive upon the executive branch of the Government, and be subject to revision only by Congress or the proper courts. The head of the proper Department, before signing a warrant for any balance certified to him by a Comptroller, may, however, submit to such Comptroller any facts in his judgment affecting the correctness of such balance, but the decision of the Comptroller thereon shall be final and conclusive, as herein provided."

The above is construed as prohibiting the Second Comptroller (designated as "Comptroller of the Treasury" by act of July 31, 1894,) from reversing the decisions of his predecessors as to the interpretation of laws as applied to individual cases, although he may, in a case not decided by any of his predecessors, render a decision putting a construction upon a law, directly the reverse of the construction put upon the same law by a predecessor. So far at least as relates to decisions rendered before July 20, 1888, in claim for bounty under the act of April 22, 1872, this law is rendered inoperative.

Deceased Claimant.

Bounty cannot be made the subject of a bequest by will, nor the subject of any contract or agreement, previous to its payment to the person entitled to receive it. If a claimant die after a certificate for the bounty has been issued, the bounty becomes a part of his personal estate, and the executor or administrator of the estate is entitled to receive it, even though the certificate or draft did not in fact reach the claimant previous to his death.

CHAPTER XXV.

PAY.

Actual Military Service Not Required—Absence from Duty—Absence Without Leave—Restoration to Service—Pay for Period of Actual Service—Detained After Expiration of Term—Resignation—Retirement—Pay till Actually Discharged—Discharge Furlough—Dishonorable Discharge and Dismissal—Minors and Aliens—Dropped for Absence Without Leave—Reduction of Non-Commissioned Officers—Contract Surgeons Appointed Assistant Surgeons—Temporary Appointment—Court-Martial. Assignment—Not Attachable—Missouri Home Guards. Colored Persons—Jackson County (Missouri) Militia—Pay for Service Performed in Good Faith—Heirs.

Actual Military Service Not Required.

Officers and enlisted men in the military service are entitled to pay as such, whether they actually performed "military service" or not, unless their right thereto be forfeited or lost in consequence of some provision of law, or regulation made in pursuance of law. Until 1879 it was held no pay was due for a period during which they were withdrawn from actual service, unless some law or regulation explicitly authorized payment for such period

Absence from Duty.

There is no law or regulation denying pay, bounty or other allowances to enlisted men in the military service, during or because of their absence

in hospital, or absence, however long continued, upon an ordinary furlough duly extended, or absence on a discharge furlough. Under the act of March 30, 1814, enlisted men in the military service (and officers of militia or volunteers in the service of the United States), who are captured by the enemy, are entitled to receive during the period of their captivity, and notwithstanding the expiration of their terms of enlistment, the same pay and allowances as if in actual service. Officers in the military service, for periods of absence on account of sickness or wounds or absence from duty awaiting orders, are entitled to receive full pay. For periods of absence with leave for other causes, they are entitled to receive full pay, if such periods of absence do not exceed, in the aggregate, 30 days in one year, and half pay for the period in excess of 30 days in one year. An officer suspended from rank and command does not thereby forfeit pay during the period of suspension. Veterinary surgeons are entitled to full pay while on leave, unless leave were granted on conditions as to pay. Contract surgeons were entitled to pay while on leave, on account of sickness or otherwise, if an acceptable substitute were furnished.

Absence Without Leave.

No pay or allowance can be collected for any period of absence without leave, nor for any

period of absence as a "deserter"; but a soldier arrested as a deserter for absence over time of furlough, and pardoned and restored to duty without trial, is restored to all his rights as to pay and allowances. An officer or soldier convicted and confined by the civil authorities for a certain period is not entitled to any pay during such period of confinement, but the conviction by civil authority does not of itself, and in the absence of any law or regulation requiring it, work a forfeiture of the pay, or of any allowance that is subject to the rules which govern pay, due at the time of arrest or withdrawal from duty

Restoration to Service.

An officer in the military service, dismissed but subsequently reappointed, is not entitled to any pay and allowances during the period between his dismissal and reappointment. Until 1878 it was held that an officer dismissed, but subsequently pardoned and "restored" by the President to his former rank and position, was entitled to pay, etc., during the period between his dismissal and restoration, unless the pardon contained no words indicative of an intention to make the restoration retrospective. In the year mentioned, it was decided by the Second Comptroller (Treasury Department) that "an officer who has been dismissed from the service, by order or direction of the President, can be restored only

by a new appointment," and that "it is not in the power of the President who directed the dismissal, or of his successor, to revoke the order of dismissal, or to restore the officer to the status occupied by him when dismissed." Under this decision, "restoration" to former rank and position is regarded as having been illegal, and no pay or allowance, not already received, can be collected for service rendered subsequent to such a "restoration."

Pay for Period of Actual Service.

An officer or enlisted man, not a prisoner-of-war, and being entitled to muster-out with his regiment, is generally regarded as though mustered out with the same, and as entitled to pay only up to the date of regimental muster-out, notwithstanding the delay in his individual muster-out was beyond his control and due to no fault of his own. If, however, he continued to perform service after the date of the expiration of his term of enlistment, and from the situation of the organization to which he belonged, or the nature of the service he was performing, or for other reasons not due to his own fault, failed to receive a discharge upon the expiration of his term, and was from necessity retained in service, he is entitled to pay, etc., to the date of actual discharge.

Detained After Expiration of Term.

The fact that a soldier, because of his being wounded or sick, and unable to travel, was not mustered out at the expiration of his term of enlistment, but was retained in hospital, is not held to entitle him to pay to a later date than the expiration of his term of enlistment. A soldier detained in service after the expiration of his term of enlistment, to be brought to trial for an offense committed previous to its expiration, continues to be a soldier, and is entitled to pay and allowances as such (subject to all proper stoppages) until the case is ended and he is notified or chargeable with notice of that fact, whether he be convicted or acquitted, or discharged without trial. If so detained, but afterwards released from custody, he is held to have been discharged by operation of law, when so notified or chargeable with notice, although a formal discharge, in writing, was not delivered to him until a later date, or none was delivered at all: the general rule being that the right to pay and allowances ceases when notice is received at the post at which it is the duty of the soldier to be. A soldier who has been sentenced to imprisonment by the military authorities, can under no circumstances receive pay beyond the date of the expiration of his term of enlistment, if his term expires during his imprisonment.

Resignation—Retirement.

An officer whose resignation takes effect while he is on leave is entitled to pay, etc., to the date given in the acceptance of his resignation; but if the resignation takes effect while he is on duty, he is entitled up to the date to which he received notice of the acceptance of his resignation, if he continued on duty to that date; otherwise, to the date he was relieved from duty. Officers discharged to take effect from a particular anterior date, who did not receive notice of their discharge until some time afterward, and who in the meantime continued on duty, are entitled to pay, etc., to the date upon which notice of discharge was received; and, whether officers or enlisted men, if discharged on a surgeon's certificate of disability, are, as a rule, entitled up to the date of receipt by them of notice of discharge. An officer on duty, when retired, is entitled to pay on the active list up to the date he receives notice of retirement, unless the receipt of such notice is prevented by his own act or default.

Pay Till Actually Discharged.

Every volunteer soldier who was mustered out and discharged with a regiment or other organization, the members of which were kept together and under discipline, and did not receive their discharges until paid off, is regarded as continuing in service until the date of payment, and entitled to pay and allowances to include that date

Discharge Furlough.

If before the expiration of his term of enlistment, a soldier was given a discharge furlough, and, through oversight or delay on the part of the Government, was not actually discharged before the discharge of the organization to which he belonged, but was discharged to date from the date of the furlough, or other date than that of actual discharge, he is, nevertheless, entitled to pay and allowances up to the date of the discharge of the organization to which he belonged.

Dishonorable Discharge and Dismissal.

A deserter, whether an officer or enlisted man, who has been arrested, and, by sentence of court-martial, dismissed from the service, is entitled to pay for the period between the date of arrest and the date on which the sentence went into operation, unless payment is prohibited by the language of the sentence, and in general an officer dismissed by sentence of court-martial will be paid to the date of the termination of his service, as specified in the sentence, or in the order promulgating the same. If dismissed "with loss of all pay and allowances," pay to and inclusive of the date of his receipt of the order of dismissal is included in the forfeiture.

Minors and Aliens.

A soldier discharged as a minor, or within three months after enlistment, for disease which existed before enlistment, or for other cause in-

volving fraud, on his part, in his enlistment, forfeits all pay and allowances due at the time of his discharge. Soldiers discharged as aliens, by the civil authorities, also forfeit all pay, etc., due.

Dropped for Absence Without Leave.

Officers dropped from the rolls of the army for absence without leave, forfeit all pay due or to become due them.

Reduction of Non-Commissioned Officer.

The reduction of a non-commissioned officer to the ranks, without trial by court-martial and without the request of his company commander, is illegal and unauthorized. A soldier thus reduced is entitled to pay as a non-commissioned officer for and during the period of his reduction, even though another may have served as non-commissioned officer in his stead during that period and drawn pay as such.

Contract Surgeon Appointed Assistant Surgeon.

Where the contract of an "acting assistant surgeon" was annulled to enable him to accept an appointment as assistant surgeon, it is held that he is entitled to no pay for any services he may have rendered during the period intervening between the date of annullment of his contract as

acting assistant surgeon and his muster into service as assistant surgeon

Temporary Appointment.

An officer of the Regular Army receiving a temporary appointment, from proper authority, to a grade in the volunteers or militia then in actual service of the United States, higher in rank than that already held by him, is entitled to the pay and emoluments of the higher grade from the time of his muster under such appointment. In no case can an officer receive the compensation of two military commissions or appointments at the same time.

When a person is appointed an officer in the Regular Army during a recess of the Senate, he is held to be entitled to no pay, etc., beyond the date of the termination of such temporary appointment (which would be the date of the beginning of the next regular session of Congress), unless his appointment were confirmed; and this without regard to the fact that he performed duty after such date and before receiving official notice of his non-confirmation.

Court-Martial.

When the sentence of a court-martial was imprisonment and forfeiture of pay and allowances due and to become due, a subsequent pardon does not restore the right to pay or allowances for the period between the date of sentence and

the date of pardon; for the executed sentence of a court-martial cannot be set aside or brought to naught by an executive order, Congress alone possessing the authority to direct that an amount forfeited, by reason of such sentence, be paid to the person convicted, or to any other person. In a case where, by sentence of a court-martial, a certain amount of the monthly pay was to be forfeited, each month, for a given period, and before the expiration of such period the pay of the grade or rank of the person was reduced so that the monthly rate of pay, as reduced, was less in amount than the amount to be forfeited per month, it has been held that it being the evident intention of the court that the person should be allowed to draw a certain amount of his pay each month, he is entitled to draw such amount per month, even after the reduction, and that only so much should be deducted per month as would leave him the amount which he was entitled to draw per month before the reduction. Where no mention is made in a sentence of a forfeiture imposed by law, and a forfeiture different in terms is specifically imposed, both are enforced as a general rule. But in a case where a person had been convicted of an eight months' absence without leave, and sentenced to forfeit pay for 15 months, it was assumed in the settlement thereof that the last-named period was intended to include the period of unauthorized absence.

The fact that the term for which the soldier enlisted has expired is not, of itself, and in the absence of a discharge, a bar to trial and sentence by court-martial for a military offense, if prosecution was duly began before the expiration of his term. When the proceedings of a court-martial are disapproved by reviewing authority, the person cannot legally be subject to the forfeitures attached to the offense with which he was charged. Pay and allowances due and unpaid under a former enlistment cannot be affected by any sentence of forfeiture imposed upon conviction of desertion from a subsequent enlistment.

Assignment.

No officer can pass away or transfer his pay accounts not actually due at the time. No enlisted man can in any manner, before discharge, assign or transfer his pay; and an assignment, or transfer, is invalid even if made after discharge, unless made by indorsement in writing on his final statements and witnessed by a commissioned officer

Not Attachable.

No trustee, process, garnishment, injunction, or attachment is recognized by the Government, either in respect to pay due for military or naval service or to other moneys due from the United States

Missouri Home Guards.

The act of March 25, 1862, provided that the officers and men (principally "Missouri Home Guards") whose services had been accepted and actually employed by the commanders of the Department of the West and Department of the Missouri, should, without regard to the fact of their not having been actually mustered into United States service, be allowed the same pay as if regularly mustered. (Claims under this law were examined by the "Hawkins Taylor Commission" in 1863, which commission was created by the act of July 12, 1862, payment by the ordinary method being suspended.)

Colored Persons.

The act of June 15, 1864, provided that all colored persons, free on April 19, 1861, who had enlisted and been mustered into the military service of the United States, should be entitled to receive from the date of their enlistment the same pay and allowances as white soldiers; and also that all colored persons (i. e., including those who were slaves on April 19, 1861,) who had been enlisted, or who thereafter enlisted, and were mustered into the military service, should be entitled to receive, from and after January 1, 1864, the same pay and allowances (except bounty) as white soldiers. (See "Bounties.")

The act of March 3, 1865, provided that all colored persons who were enlisted and mustered into the military service of the United States in South Carolina, by and under the direction of Maj.-Gen. Hunter and Brig.-Gen. Saxton, in pursuance of authority from the Secretary of War, dated August 25, 1862, should be entitled to receive, from the dates of their enlistments, the same pay and allowances as white soldiers.

Jackson County (Missouri) Militia.

The act of April 12, 1871, provided that the members of the military organizations (of Jackson Co., Missouri,) known as the Westport Police Guards, Hickman's Mills Company, and Companies A, B, C, D, and E, of the Kansas City Station Guards, should be entitled to receive for their terms of service the same pay and allowances as volunteers in the United States service.

Pay for Service Performed in Good Faith.

The act of June 3, 1884, provides that "the pay and allowances of a rank or grade paid to and received by any military or naval officer in good faith for services actually performed by such officer in such rank or grade during the war of the rebellion, shall not be charged to or recovered back from such officer because of any defect in

the title of such officer to the office, rank, or grade in which such services were so actually performed."

Heirs.

By custom of the accounting officers of the Treasury Department, pay and allowances due for service of a deceased person in the army or navy (as to bounty, vide) are payable to his heirs in the following order, unless some provision of law directs otherwise or he has in his lifetime made such disposition of the amounts then due as is recognized by the Government: The widow, children, father, mother, and brothers and sisters, in the order named; then to the nearest heir-at-law. If the person died in the service, any disposition made by him of his pay, to take effect in the event of his death in service, will be recognized.

CHAPTER XXVI.

EXTRA PAY.

Mexican War—Enroute to Mexico—Not Entitled—Disloyalty. Mexican War Heirs—Service in California, Oregon, and New Mexico—Naval Service on Coasts of California and Mexico. Officers Mustered Out at Close of Rebellion—Officers Resigned or Discharged at Own Request—Muster-Out of Service Essential—Medical Store-Keepers—Missouri State Militia. Prisoners-of-War—Rate of Extra Pay—Heirs—Officers' Additional Pay—Military Store-Keepers and Contract Surgeons. Heirs—Extra-Duty Pay.

Mexican War.

The act of July 19, 1848, provides as follows:

"Sec. 5. That the officers, non-commissioned officers, musicians, and privates engaged in the military service of the Untied States in the war with Mexico, and who served out the term of their engagement, or have been or may be honorably discharged,—and first to the widows, second to the children, third to the parents, and fourth to the brothers and sisters of such who have been killed in battle, or who died in service, or who, having been honorably discharged, have since died, or may hereafter die, without receiving the three months' pay herein provided for,—shall be entitled to receive three months' extra pay: Pro-

vided, That this provision of this fifth section shall only apply to those who have been in actual service during the war."

Under this enactment only volunteers, and such regular troops as were enlisted especially for service in the war, were regarded as entitled.

The act of February 19, 1879, provides as follows:

"That the Secretary of the Treasury be, and he is hereby, directed, out of any moneys in the Treasury not otherwise appropriated, to pay to the officers and soldiers 'engaged in the military service of the United States in the war with Mexico, and who served out the time of their engagement or were honorably discharged,' the three months' extra pay provided for by the act of July 1$, 1848, and the limitations contained in said act, in all cases, upon the presentation of satisfactory evidence that said extra compensation has not been previously received: Provided, That the provisions of this act shall include also the officers, petty-officers, seamen, and marines of the United States navy, the revenue marine service, and the officers and soldiers of the United States army employed in the prosecution of said war."

Although this enactment clearly included within its provisions the officers and enlisted men of the Regular Army, wihout regard to whether they were enlisted especially for service in the war or not, it was still held, until December, 1884,

that neither officers of such, although they served in the war in volunteer organizations, under commission from State authorities, nor enlisted men, were entitled, if retained in service after the termination of the war. Nor were the heirs of those thus retained in service, and who died without having been discharged, regarded as entitled. In December, 1884, the United States Supreme Court decided that all officers and men who served until "the war was over," or until they were "ordered or mustered out of that service," had "served out the term of their engagement," or were "honorably discharged," within the meaning of those terms as used in the act of July 19, 1848.

It is now held that all enlisted men and officers, whether in the military or naval service, who were honorably discharged after serving for any period in that war, are entitled, even if discharged before the close of the war (May 30, 1848), and not for disability incurred in the service.

Enroute to Mexico.

Soldiers who were on the high seas, en route to Mexico, at the date of the close of the war, May 30, 1848, are regarded as entitled, even though they did not reach Mexican waters until after that date.

Not Entitled.

Recruits who did not leave the United States, or did not join their respective companies, or volunteers who, though mustered into service, were not marched or sent to the seat of war or to positions where service was required of them, are not entitled; nor are non-enlisted men, such as teamsters and the like, even though their services may have entitled them to bounty-land.

Disloyalty.

The fact that an officer or enlisted man serving in the Mexican War was disloyal to the General Government during the late rebellion is no bar to the payment of an otherwise valid claim for this extra pay, the act of February 19, 1879, being in effect a re-enactment of the act of 1848, and failing to impose any restriction as to loyalty.

Mexican War Heirs.

In case of a person's death after discharge, without having received this extra pay, the same is payable to his widow, children, parents, and brothers and sisters, in the order named; then to the nearest heir-at-law.

Service in California, Oregon and New Mexico.

Under the act of September 28, 1850, officers of the army, while serving in California and Oregon,

were thereafter to receive, until March 1, 1852, a per diem of $2 in addition to their regular pay and allowances, and enlisted men a per diem equal to their pay proper, in addition to their regular pay and allowances, such extra pay to be retained and paid (the enlisted men) upon their honorable discharge. The act of August 31, 1852, extended the period during which extra per diem pay should be allowed, to March 1, 1853, but reduced the amounts one-half; and further provided that during the year from March 1, 1852, to March 1, 1853, such extra per diem pay (as reduced) should be allowed to officers and enlisted men of the army while serving in New Mexico

Naval Service on Coasts of California and Mexico.

The act of August 31, 1852, provided that "the same increased or additional compensation" as had been allowed "the officers and soldiers of the army who served in California," should be allowed to the officers and enlisted men of the navy, marine corps, and revenue marine service, while serving in the Pacific Ocean, on the coast of California and Mexico, at any time after September 28, 1850. (A former holding that their extra pay should cease from and after July 1, 1870, has been reversed, the law continuing in full force.) The act of March 3, 1853, extended the provisions

of the foregoing enactment to the officers and enlisted men of the navy, marine corps, and revenue marine service, while serving in the Pacific Ocean, on the coasts of California and Mexico; during the Mexican War, and up to September 28, 1850.

Officers Mustered Out at Close of Rebellion.

The army appropriation act of March 3, 1865, provides as follows:

"Sec. 4. That all officers of volunteers now in commission, below the rank of brigadier-general, who shall continue in the military service to the close of the war, shall be entitled to receive, upon being mustered out of said service, three months' pay proper."

Under this enactment, only those officers mustered out after April 9, 1865, because of their services being no longer required by reason of the close of the war, were entitled.

Officers Resigned or Discharged at Own Request.

The act of July 13, 1866, provides as follows:

"That section 4 of an act entitled 'An act making appropriations for the support of the army for the year ending June 30, 1866,' be so construed as to entitle to the three months' pay proper, provided for therein, all officers of volunteers below the rank of brigadier-general who were in

the service on the 3d day of March, 1865, and whose resignations were presented and accepted or who were mustered out at their own request or otherwise honorably discharged from the service after the 9th day of April, 1865."

Muster-out of Service Essential.

Muster out of the United States service is a condition precedent to allowance of this extra pay. Hence, judge-advocates of the army, who were in commission before March 3, 1865, as volunteer officers, but who (by the act of February 25, 1867,) were transferred to the regular branch of the army without discharge or reappointment, are not entitled.

Medical Store-Keepers.

The medical store-keepers appointed under the act of May 20, 1862, are held to have been officers of the Regular Army, and hence not entitled to the three months' pay proper.

Missouri State Militia.

The officers of the Missouri State Militia are not entitled, the benefits of neither enactment having been extended to them.

Prisoners of War.

There is now no authority for paying certain returned prisoners-of war the three months' extra pay authorized by order of the Secretary of War, dated May 30, 1865.

Rate of Extra Pay.

Payment of the extra pay provided by each of the several foregoing enactments is made at the rate of pay to which the officer or other person was entitled at the date of the termination of his service.

Heirs.

Until 1876 it was held that the extra pay provided by the acts of March 3, 1865, and July 13, 1866, was not payable to the heirs of an officer who was entitled thereto, but died without receiving the same.

The act of July 3, 1884, provides as follows:

"That section 4 of an act entitled 'An act making appropriations for the support of the army for the year ending June 30, 1866,' approved March 3, 1865, be so construed as to entitle to the three months' pay proper provided for therein the heirs or legal representatives of all officers of volunteers specified therein who were killed or who died in the service between the 3d day of March and the 10th day of April, 1865."

Officers' Additional Pay.

The act of March 2, 1867, provides as follows:

"That for two years from the 1st day of July, 1866, all officers of the army below the rank of major-general, including the professors at West Point, shall be paid addition of 33 1-3 per centum to their present pay proper."

It has always been held that volunteer as well as regular officers are entitled to the benefits of this law. In January, 1882, it was decided, after an exhaustive review of the former conflicting decisions, that the law should be so construed as to allow its benefits to every officer, regular or volunteer, who was in service during any part of the period of two years from July 1, 1866. Officers who left the service between June 30, 1866, and March 2, 1867, and did not re-enter until after June 30, 1868, have not, as a rule, received the extra pay. Those who left the service between June 30, 1866, and March 2, 1867, and re-entered the service between March 2, 1867, and July 1, 1868, have received the benefits of the law for their service beginning after March 2, 1867, but not in every case for their service ending before March 2, 1867. Those who left the service between June 30, 1866, and March 2, 1867, and re-entered the service before March 2, 1867, and all others not included among those hereinbefore specified, have, as a rule, received the benefits of the law.

Military Store-Keepers and Contract Surgeons.

Military store-keepers are entitled to additional pay under the above law, but not contract surgeons.

Heirs.

In case of the death of the officer without receiving the additional pay to which he is entitled

or which he would have been entitled to receive had he survived, as above, title thereto descends to his widow, children, father, mother, and brothers and sisters, in the order named; then to the nearest heir-at-law.

Extra-Duty Pay.

Section 35 of the act of March 3, 1863, "for enrolling and calling out the national forces, and for other purposes," provided:

"And be it further enacted, That hereafter * * enlisted men, now or hereafter detailed to special service, shall not receive any extra pay for such service beyond that allowed to other enlisted men."

General Order No. 192 of the War Department, dated June 25, 1863, provided:

"Section 35, act of March 3, 1863, entitled 'An act for enrolling and calling out the national forces, and for other purposes,' does not exclude enlisted men employed as clerks and messengers in the military offices in Washington, and at the several geographical division and department headquarters, from receiving the extra pay hereafter allowed them."

There is no law allowing a hospital steward anything in addition to his lawful pay and allowances as hospital steward, for performing the duties of assistant surgeon.

CHAPTER XXVII.

TRAVEL PAY.

The General Law—Place of Residence—Involuntary Discharge Necessary—Discharge After Twenty Years Service—Resignation on Surgeon's Certificate—Place from Which Travel Pay Allowed—Colored Undercooks—First Michigan Cavalry—California and Nevada Volunteers—Mississippi Squadron—Navy in General—Not Subject to Indebtedness.

The General Law.

The act of January 11, 1812, and subsequent enactments, as embodied in sections 1289 and 1290, Revised Statutes, provide as follows:

"Sec. 1289. When an officer is [honorably] discharged from the service, (except by way of punishment for an offense,) he shall be allowed transportation and subsistence from the place of his discharge to the place of his residence at the time of his appointment, or to the place of his original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel pay and commutation of subsistence, according to his rank, for such time as may be sufficient for him to

or which he would have been entitled to receive had he survived, as above, title thereto descends to his widow, children, father, mother, and brothers and sisters, in the order named: then to the nearest heir-at-law.

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There is no law allowing a hospital steward anything, in addition to his lawful pay and allowances as hospital steward, for performing the duties of assistant surgeon.

CHAPTER XXVI

TRAVIL PAY

[illegible] General Law—Place of Residence—Involuntary Discharge—Insolvent Act—After Twenty Years Service—Incapacity or Sickness Certificate—Pay from What Time Travel Pay Allowed—Limited Underground—Fit Medical Certificate—Claims and Travel Vouchers—Misconduct Squadron—Navy Estimates—Not Subject to Assessment.

The General Law

The act of January 1, 1871, as subsequently amended, embodied in section 1291 and 1292, Revised Statutes, provides as follows:

"Sec. 1291. When an officer [honorably] discharged from the service, resigns or who is dismissed or otherwise by sentence of a court-martial, shall be allowed transportation and subsistence from the place of his discharge to the place of his residence at the time of his appointment, or to the place of his original enlistment, unless the contrary direction be given by the President. But no such officer shall be allowed transportation and subsistence [illegible] to any place more than [illegible] from the place at which he was discharged, [illegible]

travel from the place of discharge to the place of his residence, or original muster into service, computed at the rate of one day for every 20 miles.

"Sec. 1290. When a soldier is [honorably] discharged from the service, (except by way of punishment for an offense,) he shall be allowed transportation and subsistence from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel pay and commutation of subsistence for such time as may be sufficient for him to travel from the place of discharge to the place of his enlistment, enrollment, or original muster into the service, computed at the rate of one day for every 20 miles."

Place of Residence.

The place where an officer entered the service is, in contemplation of law, "the place of residence" to which he is entitled to be returned.

Involuntary Discharge Necessary.

It is held that the discharge must have been granted through no voluntary act or request on the part of the officer or soldier. If granted upon the request of parents, or for the good of the service, the discharge is held to have been involuntary. A discharge on resignation is in general regarded as one granted as a favor or for the personal accommodation of the officer,

and not involuntary. But if a resignation given, with or without reasons assigned, was accepted and discharge granted for the good of the service, it is regarded as involuntary.

Enlisted men who, after serving some time, are found to be utterly worthless on account of drunkenness or some other trait of bad character which discipline fails to cure, and who are consequently discharged for the interests of the service before the expiration of the term for which they enlisted, are held not to have been discharged "by way of punishment for an offense," within the meaning of the law, nor by way of favor.

An officer dropped from the rolls on account of alleged inefficiency is entitled.

Discharge After Twenty Years Service.

Enlisted men discharged, at their own request, after 20 years faithful service, are entitled.

Resignation on Surgeon's Certificate.

A discharge granted upon an officer's resignation based on surgeon's certificate of disability incurred in service and line of duty, is now, and since 1879, regarded as involuntary.

Place from Which Travel Pay Allowed.

In a case where a regiment (volunteer) was formally mustered out, but not disbanded, at a place distant from the State in which it was or-

ganized, and was transported, at Governme expense, to a place within the State, at whi final payment was made and final dischar papers delivered (pay being allowed for the int val between muster-out and payment, with tra ling allowances from the place of payment), it h been held that an officer of the regiment, wh at the dates of its muster-out and final payme was at his home, whither he had previously go on leave of absence, at his own expense, was e titled to traveling allowances only from the pla of final payment of the regiment.

Colored Undercooks.

Colored undercooks authorized to be enlist by the act of March 3, 1863, are entitled to traveling allowances, no matter for what cau discharged.

First Michigan Cavalry.

The act of July 28, 1866, provides as follows

"That there is hereby appropriated for the ment of traveling expenses of the membe 1st regiment of Michigan cavalry from the in Utah Territory, where they were muster of service, in the year 1866, to the place of enrolment, a sum sufficient to allow each ber $325, deducting therefrom the amount pai each for commutation of travel, pay, and subs

ence by the Government, when thus mustered out, and that the accounts be settled and paid under the direction of the Secretary of War."

California and Nevada Volunteers.

The act of March 2, 1867, provides as follows:

"That the paymaster-general be authorized to pay, under such regulations as the Secretary of War shall prescribe, in addition to the amount received by them, for the traveling expenses of such California and Nevada volunteers as were discharged in New Mexico, Arizona, or Utah, and at points distant from the place or places of enlistment, such proportionate sum according to the distance trayeled as have been paid to the troops of other States similarly situated; and such amount as shall be necessary to pay the same is hereby appropriated out of any moneys in the Treasury not otherwise appropriated."

This extra traveling allowance is held to be restricted to those who made the journey at the time of discharge or within a reasonable time thereafter; and who were discharged at points where transportation could not be furnished by the Government, and whence the cost, by the usually traveled route, was very great, and who were obliged to travel at least 300 miles.

Mississippi Squadron.

Enlisted men discharged from the Mississippi squadron (gunboats) at a distance from their

homes, were allowed after October 27, 1862, a sum not exceeding $12, for their necessary traveling expenses.

Navy in General.

Enlisted men receiving an ordinary discharge from the naval service after December 14, 1864, and before January 1, 1866, were entitled to mileage; those receiving an honorable discharge after December 14, 1864, and before January 2, 1873, were also entitled to mileage. This mileage was allowed only under certain circumstances, and was not a matter of law, but of regulation.

Not Subject to Indebtedness.

The traveling allowances of a soldier honorably discharged cannot be stopped for any indebtedness of his to the Government.

CHAPTER XXVIII.

COMMUTATION OF SUBSISTENCE.

Enlisted Men in the Military Service—Enlisted Men in the Navy or Marine Corps—Heirs—When on Furlough.

Enlisted Men in the Military Service.

The act of March 30, 1814, as embodied in section 1288, Revised Statutes, provides as follows:

"Sec. 1288. Every non-commissioned officer and private of the Regular Army, and every officer, non-commissioned officer, and private of any militia or volunteer corps, in the service of the United States, who is captured by the enemy, shall be entitled to receive during his captivity, notwithstanding the expiration of his term of service, the same pay, subsistence, and allowance to which he may be entitled while in the actual service of the United States; but this provision shall not be construed to entitle any prisoner of war, of such militia corps, to any pay or compensation after the date of his parole, except the traveling expenses allowed by law."

Enlisted Men in the Navy or Marine Corps.

The joint resolution of July 25, 1866, provides as follows:

"Whereas by general order of the War Department of February 14, 1862, rations to Union soldiers held as prisoners of war in the rebel States, were commuted at a cost price during the period of their imprisonment; and whereas a large number of the said prisoners have been paid under said order, but many equally worthy with them, and who have suffered in rebel prisons, have not been so paid: Therefore,

"Be it resolved by the Senate and House of Representatives of the Untied States of America in Congress assembled, That all United States soldiers, sailors, and marines who were held as prisoners of war in rebel States, shall be paid commutation of rations at cost prices during the period of their imprison : Provided, That no person who has sold or ferred any interest in the claim for said co ation, nor any purchaser or assignee of such aim or interest, shall be benefited by this resolution; and the amount of such commutation shall be paid out of any money in the Treasury not otherwise appropriated."

Heirs.

The act of March 2, 1867, provides as follows:

"That the provisions of the joint resolution approved July 25, 1866, entitled 'A joint resolution in regard to rations of Union soldiers held as prisoners of war,' shall be extended so as to allow commutation of rations at cost prices in the settlement of the accounts of all enlisted men of the army, navy, and marine corps, who died while held as prisoners of war in the rebel States, or who, having been so held as prisoners of war,

have died or may die subsequent to release; to be paid, however, only to the widow of such deceased person, if such widow remain unmarried, or in case there be no such widow then to the surviving children of the deceased; or if there be no such widow or children, then to the parent or parents of the deceased; or if there be no such widow, children, parent, or parents, then to the brothers and sisters of the deceased."

When on Furlough.

Soldiers when on furlough, of whatsoever character, were entit ed to commutation of subsistence for the period of their absence. In general it is necessary, in order to collect commutation money, to file in the Department the original furlough.

CHAPTER XXIX.

ARTIFICIAL LIMBS AND APPLIANCES.

Artificial Limbs—Commutation—Service Not in War of Rebellion—Inability to Use Artificial Limb—Transportation to be Fixed—Intervals of Allowance—Trusses.

Artificial Limbs.

Section 4787, Revised Statutes, as amended by the act of February 27, 1877, is as follows:

"Sec. 4787. Every officer, soldier, seaman, and marine who was disabled during the war for the suppression of the rebellion in the military or naval service, and in the line of duty, or in consequence of wounds received or disease contracted therein, and who was furnished by the War Department, since the 17th day of June, 1870, with an artificial limb or apparatus for resection, who was entitled to receive such limb or apparatus since said date, shall be entitled to receive a new limb or apparatus at the expiration of every five years thereafter, under such regulations as have been or may be prescribed by the Surgeon-General of the Army.

"The provisions of this section shall apply to all officers, non-commissioned officers, enlisted and hired men of the land and naval forces of the United States, who, in the line of their duty as

such, shall have lost limbs or sustained bodily injuries depriving them of the use of any of their limbs, to be determined by the Surgeon-General of the Army; and the term of five years herein specified shall be held to commence in each case with the filing of the application for the benefits of this section."

The substantial addition by the act of February 27, 1877, to already existing law was simply the provision for "hired" men (quartermaster's employes, etc.) in the military or naval service, in the war of the rebellion or otherwise, who were not included in former laws.

Commutation.

Section 4788, Revised Statutes, provides:

"Sec. 4788. Every person entitled to the benefits of the preceding section may, if he so elects, receive, instead of such limb or apparatus, the money value thereof, at the following rates, namely: For artificial legs, $75; for arms, $50: for feet, $50; for apparatus for resection, $50."

Service Not in War of Rebellion.

It was not until the act of August 15, 1876, that the provisions of the law extended to the loss or disability of limbs, etc., incurred otherwise than during the war of the rebellion

This act provides:

"That every officer, soldier, seaman and marine

who, in the line of duty, in the military or naval service of the United States, shall have lost a limb, or sustained bodily injuries, depriving him of the use of any of his limbs, shall receive once every five years an artificial limb or appliance, or commutation therefor, as provided and limited by existing laws, under such regulations as the Surgeon-General of the Army may prescribe; and the period of five years shall be held to commence with the filing of the first application after the 17th day of June in the year 1870."

Inability to Use Artificial Limb.

Section 4790, Revised Statutes, as amended by the act of February 27, 1877, is as follows:

"Sec. 4790. Every person in the military or naval service who lost a limb during the war of the rebellion, or is entitled to the benefits of section 4787, but from the nature of his injury is not able to use an artificial limb, shall be entitled to the benefits of section 4788, and shall receive money commutation as therein provided."

Transportation to be Fitted.

Section 4791, Revised Statutes, as amended by the act of February 27, 1877, is as follows:

"Sec. 4791. The Secretary of War is authorized and directed to furnish to the persons embraced by the provisions of section 4787 transportation to and from their homes and the place where they may be required to go to obtain artificial limbs provided for them under authority of law.

"The transportation allowed for having artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded from the appropriations for invalid pensions."

Intervals of Allowance.

The act of March 3, 1891, amending section 4787, Revised Statutes, provides:

"That section 4787 of the Revised Statutes of the United States be amended by striking out the word "five" where it occurs therein, and inserting in lieu thereof the word "three," so that when amended said section will read as follows: Every officer, soldier, seaman, and marine who was disabled during the war for the suppression of the rebellion, in the military or naval service, and in the line of duty, or in consequence of wounds received or disease contracted therein, and who was furnished by the War Department since the 17th day of June, 1870, with an artificial limb or apparatus for resection, who was entitled to receive such limb or apparatus since said date, shall be entitled to receive a new limb or apparatus at the expiration of every three years thereafter, under such regulations as have been or may be prescribed by the Surgeon-General of the army."

It thus appears that if the limb was not lost or disabled in the war of the rebellion, but in service previous or subsequent thereto, the interval of allowance of artificial limb or commutation continues at five years.

Trusses.

The act of May 28, 1872, (now sections 1176, 1177, 1178, Revised Statutes,) provides:

"That every soldier of the Union army who was ruptured while in the line of duty, during the late war for the suppression of the rebellion, shall be entitled to receive a single or double truss of such style as may be designated by the Surgeon-General of the United States army as the best suited for such disability

"Sec. 2. That application for such truss shall be made by the ruptured soldier to an examining surgeon for pensions, whose duty it shall be to examine such applicant, and for every such applicant, found to have a rupture or hernia, shall prepare and forward to the Surgeon-General an application for such truss, without charge to the soldier.

"Sec. 3. That the Surgeon-General of the United States army is hereby authorized and directed to purchase and procure the number of trusses which may be required for distribution to such disabled soldiers, at a price not greater than the same are sold to the trade at wholesale; and the cost of the same shall be paid, upon the requisition of the Surgeon-General, out of any moneys in the Treasury not otherwise appropriated."

The act of March 3, 1879, amending the act of May 28, 1872, (now sections 1176, 1177, 1178. Revised Statutes,) is as follows:

"That section 1 of the act entitled 'An act to provide for furnishing trusses to disabled soldiers,' approved May 28, 1872, be, and the same is hereby, amended so that said section shall read as follows:

"That every soldier of the Union army, or petty officer, seaman, or marine in the naval service, who was ruptured while in the line of duty during the late war for the suppression of the rebellion, or who shall be so ruptured thereafter in any war, shall be entitled to receive a single or double truss of such style as may be designated by the Surgeon-General of the United States army as best suited for such disability; and whenever said truss or trusses so furnished shall become useless from wear, destruction, or loss, such soldier, petty-officer, seaman, or marine shall be supplied with another truss on making a like application as provided for in section 2 of the original act of which this is an amendment: Provided, That such application shall not be made more than once in two years and six months: And provided further, That sections 2 and 3 of the said act of May 28, 1872, shall be construed so as to apply to petty-officers, seamen, and marines of the naval service, as well as to soldiers of the army."

CHAPTER XXX.

CORRECTION OF MUSTER.

Old Law—Present Law—Benefits—Staff-Officers.

Old Law.

The joint resolution of July 26, 1866, provides as follows:

"That in every case in which a commissioned officer actually entered on duty as such commissioned officer, but by reason of being killed in battle, capture by the enemy, or other cause beyond his control, and without fault or neglect of his own, was not mustered within a period of not less than 30 days, the pay department shall allow to such officer full pay and emoluments of his rank from the date on which such officer actually entered on such duty as aforesaid, deducting from the amount paid in accordance with this resolution all pay actually received by such officer for such period.

"Sec. 2. And be it further resolved, That the heirs or legal representatives of any officer whose muster into service has been or shall be amended hereby, shall be entitled to receivte he arrears of pay due such officer or the pension provided by

law for the grade into which such officer is mustered under the provisions of the first section of this resolution."

The joint resolution of July 11, 1870, the ostensible object of which was to amend and construe the preceding resolution, was self-destructive, being rendered of no practical effect by a proviso declaring that it should not be construed to apply to cases in which, under the laws and army regulations in force at the time, no lawful muster could have been had under the commission, even after the actual receipt of the same.

Present Law.

The act of June 3, 1884, amendatory of the joint resolution of July 11, 1870, and the act of February 3, 1887, amendatory of the act of June 3, 1884, finally expired by limitation on June 3, 1895, and were superseded by the act of February 24, 1897, which provides as follows:

"That any person who was duly appointed or commissioned to be an officer of the volunteer service during the war of the rebellion, and who was subject to the mustering regulations at the time applied to members of the volunteer service, shall be held and considered to have been mustered into the service of the United States in the grade named in his appointment or commission from the date from which he was to take rank under and by the terms of said appointment or commission, whether the same was actu-

ally received by him or not, and shall be entitled to pay, emoluments, and pension as if actually mustered at that date: Provided, That at the date from which he was to take rank by the terms of his appointment or commission there was a vacancy to which he could be so appointed or commissioned, and his command had either been recruited to the minimum number required by law and the regulations of the War Department, or had been assigned to duty in the field, and that he was actually performing the duties of the grade to which he was so appointed or commissioned; or if not so performing such duties, then he shall be held and considered to have been mustered into service and to be entitled to the benefits of such muster from such time after the date of rank given in his commission as he may have actually entered upon such duties: Provided further, That any person held as a prisoner of war, or who may have been absent by reason of wounds, or in hospital by reason of disability received in the service in the line of duty, at the date of issue of his appointment or commission, if a vacancy existed for him in the grade to which so appointed or commissioned, shall be entitled to all the benefits to which he would have been entitled under this act if he had been actually performing the duties of the grade to which he was appointed or commissioned at said date: Provided further, That this act shall be construed to apply only in those cases where the commission bears date prior to June 20, 1863, or after that date when the commands of the persons appointed or commissioned were not below the minimum number required by then existing

laws and regulations: And provided further, That the pay and allowances actually received for the period covered by the recognition extended under this act shall be deducted from the sums otherwise to be paid thereunder

"Sec. 2. That the heirs or legal representatives of any person whose muster into service shall be recognized and established under the terms of this act shall be entitled to receive the arrears of pay and emoluments due, and the pension, if any, authorized by law, for the grade to which recognition shall be so extended.

"Sec. 3. That the pay and allowances of any rank or grade paid to and received by any military or naval officer in good faith for services actually performed by such officer in such rank or grade during the war of the rebellion, other than as directed in the fourth proviso of the first section of this act, shall not be charged to or recovered back from such officer because of any defect in the title of such officer to the office, rank, or grade in which such services were so actually performed.

"Sec. 4. That all acts and parts of acts inconsistent with the provisions of this act be, and the same are hereby, repealed."

Benefits

The correction of muster not only entitles the soldier or his heirs to the difference in pay, in many cases amounting to a large sum, but makes a difference in the rate of pension under the general law, when the pensioned disability or

death-cause originated during a period over which recognition in a higher grade has been extended.

Staff-Officers.

It is held that staff-officers, appointed by the President, do not come under the laws for the correction of muster

CHAPTER XXXI.

DESERTION.

Affecting Citizenship—Exceptions to Loss of Citizenship—Military Service—Limitation Removed—Naval Service—Returned Under President's Proclamation—Restored to Duty by Competent Authority—Faithful Service Construed—Charge of Desertion Rebutted—Pensionable Status Affected—Profit by Desertion and Re-enlistment—Forfeiture of Pay—Private Funds and Property Not Forfeited—Desertion After Transfer—Death While in Desertion—Deserters' Release—Drafted Men and Substitutes—Civilian Employees.

Affecting Citizenship

The act of March 3, 1865, as embodied in the Revised Statutes, provides as follows:

"Sec. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within 60 days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizenship thereof.

"Sec. 1998. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 1996.

Exceptions to Loss of Citizenship.

The act of July 19, 1867, as embodied in section 1997, Revised Statutes, provides:

"Sec. 1997. No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the army or navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion."

A further exception to the foregoing occurs in the case of deserters from the Regular Army, who returned on or before August 15, 1866, under General Order 43, A. G. O., War Department, series of 1866; or on or before January 1, 1874, under the order of the Secretary of War, dated October 10, 1873.

Military Service.

The acts of August 7, 1882, July 5, 1884, and May 17, 1886, have expired by limitation, but have been substantially re-enacted and are superseded by the act of March 2, 1889, which, as amended by the act of March 2, 1891, is as follows:

"That the charge of desertion now standing on the rolls and records in the office of the Adjutant-General of the United States Army against any soldier who served in the late war in the volunteer service shall be removed in all cases where it shall be made to appear to the satisfaction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such soldier served faithfully until the expiration of his term of enlistment, or until the 1st day of May, anno Domini 1865, having previously served six months or more, and, by reason of absence from his command at the time the same was mustered out, failed to be mustered out and to receive an honorable discharge, or that such soldier absented himself from his command, or from hospital while suffering from wounds, injuries, or disease received or contracted in the line of duty, and was prevented from completing his term of enlistment by reason of such wounds, injuries, or disease.

"Sec. 2. That the Secretary of War is hereby authorized to remove the charge of desertion from the record of any regular or volunteer soldier in the late war upon proper application therefor, and satisfactory proof in the following cases:

"First. That such soldier, after such charge of desertion was made, and within a reasonable time

reafter, voluntarily returned to his command served faithfully to the end of his term of vice, or until discharged.

"Second. That such soldier absented himself om his command or from hospital while suffer- ng from wounds, injuries, or disease, received or ontracted in the line of duty, and upon recovery oluntarily returned to his command and served faithfully thereafter, or died from such wounds, injuries, or disease while so absent, and before the date of muster-out of his command, or expira- tion of his term of service, or was prevented from so returning by reason of such wounds, injuries, or diseases before such muster-out, or expiration of service.

"Third. That such soldier was a minor, and was enlisted without the consent of his parent or guardian, and was released or discharged from such service by the order or decree of any United States court on habeas corpus or other judicial proceedings, and in such case such soldier shall not be entitled to any bounty or allowance, or pay for any time such soldier was not in the perform- ance of military duty.

"Sec. 3. That the charge of desertion now standing on the rolls and records in the office of the Adjutant-General of the Army against any regular or volunteer soldier who served in the late war of the rebellion by reason of his having enlisted in any regiment, troop, or company, or in the United States navy or marine corps, with- out having first received a discharge from the regiment, troop, or company in which he had previously served, shall be removed in all cases wherein it shall be made to appear to the satis-

faction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such re-enlistment was not made for the purpose of securing bounty or other gratuity that he would not have been entitled to, had he remained under his original term of enlistment; that the absence from the service did not exceed four months, and that such soldier served faithfully under his re-enlistment.

"Sec. 4. That whenever it shall appear from the official records in the office of the Adjutant-General, United States Army, that any regular or volunteer soldier of the late war was formally restored to duty from desertion by the commander competent to order his trial for the offense, or, having deserted and being charged with desertion, was, on return to the service, suffered, without such formal restoration, to resume his place in the ranks of his command, serving faithfully thereafter until the expiration of his term, such soldier shall not be deemed to rest under any disability, because of such desertion, in the prosecution of any claim for pension on account of disease contracted or wounds or injuries received in the line of his duty as a soldier.

"Sec. 5. That when the charge of desertion shall be removed under the provisions of this act from the record of any soldier, such soldier, or, in case of his death, the heirs or legal representatives of such soldier, shall receive the pay and bounty due to such soldier: Provided, however, That this act shall not be so construed as to give to any such soldier, or, in case of his death, to the heirs or legal representatives of any such soldier, any pay, bounty, or allowance for any time

during which such soldier was absent from his command without proper authority, nor shall it be so construed as to give any pay, bounty, or allowance to any soldier, his heirs or legal representatives, who served in the army a period of less than six months.

"Sec. 6. That the Secretary of War be, and he hereby is, authorized and directed to amend the military record of any soldier who enlisted for the war with Mexico, upon proper application, where the rolls and records of the Adjutant-General's office show the charge of desertion against him, when such rolls and records show the facts set out in the following cases:

"First. That said soldier served faithfully the full term of his enlistment, or having served faithfully for six months or more, and until the 4th day of July anno Domini 1848, left his command without having received a discharge.

"Second. That such soldier, after said charge of desertion was entered on the rolls, voluntarily returned to his command within a reasonable time, and served faithfully until discharged.

"Sec. 7. That the provisions of this act shall not be so construed as to relieve any soldier from the charge of desertion who left his command from disaffection or disloyalty to the Government, or to evade the dangers and hardships of the service, or whilst in the presence of the enemy (not being sick or wounded), or while in arrest or under charges for breach of military duty, or in case of a soldier of the Mexican War, who did not actually reach the seat of war.

"Sec. 8. That when such charge of desertion is removed under the provisions of this act, the

soldier shall be restored to a status of honorable service, his military record shall be corrected as the facts may require, and an honorable discharge shall be issued in those cases where the soldier has received none; and he shall be restored to all his rights as to pension, pay, or allowances as if the charge of desertion had never been made; and in case of the death of said soldier, his widow or other legal heir shall be entitled to the same rights as in case of other deceased honorably discharged soldiers: Provided, That this act shall not be construed to give to any soldier, or his legal representatives or heirs, any pay or allowance for any period of time he was absent without leave, and not in the performance of military duty.

"Sec. 9. That all applications for relief under this act shall be made to and filed with the Secretary of War within the period of three years from and after July 1, 1889, and all applications not so made and filed within said term of three years shall be forever barred, and shall not be received or considered.

"Sec. 10. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed."

Limitation Removed.

The act of March 2, 1895, provides as follows:

"That section 9 of the act for the relief of certain volunteer and regular soldiers of the late war and the war with Mexico, approved March 2, 1889, be, and the same is hereby, so amended as to remove the limitation of time within which ap-

plications for relief may be received and acted upon under the provisions of said act."

Naval Service.

The act of August 14, 1888, relating to the removal of charge of desertion of certain appointed and enlisted men of the navy and marine corps expired by limitaion on August 14, 1893, and has not since been re-enacted

Returned Under President's Proclamation.

In cases of soldiers who returned to the service under the President's proclamation of March 10, 1863, (i. e., having deserted before March 10, 1863; voluntarily returned on or before April 1, 1863); or who returned to the service under the President's proclamation of March 11, 1865 (i. e., having deserted before March 11, 1865, voluntary returned on or before May 10, 1865,) it is held that there is no "charge of desertion" to be removed.

Restored to Duty by Competent Authority.

In cases of soldiers who were court-martialed, or were restored to duty by competent authority without trial, it is held that there is no "charge of desertion" to be removed. The "competent authority" which might restore a person to duty without trial, is such authority as had power to

convene a court-martial; not that of the commanding officer of a company, nor usually that of the commanding officer of a regiment.

Faithful Service Construed.

If the soldier, before May 1, 1865, was absent without leave, or as a deserter, for but a brief period of time—say a week or 10 days; or, under special circumstances, a longer period—voluntarily returned, was restored to duty without formal action of competent authority, and served faithfully thereafter until after May 1, 1865, when he deserted and never returned, the War Department, in determining the matter of the removal of the second charge of desertion, will, at its discretion, take no notice of the first charge of desertion, and consider him as having "served faithfully until May 1, 1865," within the meaning of the law

Charge of Desertion Rebutted.

It is held by the Second Comptroller of the Treasury Department (a decision of August, 1885), that if it appeared that a soldier marked as a deserter, voluntarily returned to his command within a reasonable time (three or four months), while the war was still flagrant and the army engaged in active hostilities, and by formal action of competent authority was unconditionally

received into the service, or was received upon conditions which have been fulfilled, not involving the forfeiture of pay and allowances (except, of course, for the period of absence), or was restored or permitted to return to duty without any formal action, thereafter rendered faithful and acceptable military service, and was honorably discharged, the presumption that he was a "deserter" is conclusively rebutted and overthrown; and that in such cases the soldier is to be treated as if merely "absent without leave," and the pay, etc., allowed accordingly. The same principle is applied when both the "desertion" and the return occurred after the cessation of hostilities

Pensionable Status Affected.

Under the general law, or what is commonly called the "old law," a discharge of some sort, either honorable or dishonorable, from every service entered into is necessary to give the applicant a pensionable status.

Under the act of June 27, 1890, or what is commonly called the "new law," an honorable discharge from every service entered into during the late war only, is necessary to give the applicant a pensionable status.

Profit by Desertion and Re-Enlistment.

In determining whether re-enlistment into another organization, without having received a

discharge from an organization into which a soldier had previously enlisted, was made for the purpose of securing bounty or other gratuity to which he would not have been entitled had he remained under his original term of enlistment, the War Department takes notice of State and local bounties, and amounts received for enlistment as a substitute, as well as of bounties offered by the General Government.

Forfeiture of Pay.

By desertion from the service a person forfeits all pay and allowances then due him, and his right thereto is restored only by a formal adjustment of the matter during service, or a removal of the charge under the laws enacted for that purpose.

Private Funds and Property Not Forfeited.

Private funds placed in the custody of the Government by a person in the service, are not forfeited by desertion; but should he at the time of desertion, or afterwards, be indebted to the Government, such funds may be applied to the discharge of his indebtedness. The appraised value of a horse owned by a trooper at the date of his muster into service, and subsequently turned over to the Government, or the value of a private horse lost through any of the exigencies or neces-

sities of the service, is due and payable independent of the contract of enlistment, and is not forfeited by desertion

Desertion After Transfer.

If, as shown by the records, a person enlisted or was drafted for the volunteer service, but was assigned to the regular service, in considering the matter of the removal of a charge of desertion standing against him, the War Department regards him as though having been in the volunteer service. If transferred or enlisted into the regulars from the volunteer service, and then deserting, he stands upon the same footing as though originally enlisted in the regular service.

Death While in Desertion.

If a soldier, while absent as a "deserter" from hospital, or from furlough given by proper authority, died before the muster-out of his command, from wounds, injuries, or disease received or contracted in the service and line of duty, the charge of desertion may be removed upon application by his heirs or legal representatives. If while thus absent he died after the muster-out of his command, it must appear that during the entire period after his desertion until the muster-out of his command, he was unable to return to the service. (If he would not have been en-

titled to be mustered out with the organization to which he belonged at the time of his desertion, had he been present with the same, "his command," within the meaning of the law, is such other organization, or portion of an organization, with which he would have been entitled to be mustered out.)

Deserters' Release.

The act of April 11, 1890, provides as follows:

"That the 103d article of the Rules and Articles of War be, and the same is hereby, amended by adding thereto the following words: No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in completing the period of the limitation: Provided, That said limitation shall not begin until the end of the term for which said person was mustered into the service."

Under the above enactment it is the practice of the War Department to issue to the soldier, upon a proper application being filed, what is termed a "deserters' release." This release is not regarded as a discharge, but simply protects the soldier from arrest for desertion.

Drafted Men and Substitutes.

In the administration of the act of 1889, as above,, for the removal of charges of desertion drafted men and substitutes are regarded as equally within the law as though they had volunteered or entered the regular service.

Civilian Employes

A civilian employe of the Quartermaster or Commissary Departments, who voluntarily quits the service, is in no sense a "deserter," nor subject to any of the penalties attaching to desertion.

CHAPTER XXXII.

DISLOYALTY.

Disloyal Pensioners—Disloyal Claimants—Ex-Confederates Enlisted in U. S. Service—Prisoners Enlisted in Confederate Service—Acts of Disloyalty—Disloyalty Not a Bar.

Disloyal Pensioners.

The act of February 4, 1862, provided as follows:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to strike from the pension rolls the names of all such persons as have or may hereafter take up arms against the Government of the United States, or who have in any manner encouraged the rebels or manifested a sympathy with their cause."

Certain pensioners dropped under this law can be restored under the act of March 9, 1878. (See "Restoration of Pensions.")

Disloyal Claimants.

The act of July 14, 1862, provides as follows:

"That no moneys shall be paid to the widow, or children, or any heirs of any deceased soldier on account of bounty, back pay, or pension, who

have in any way been engaged in or who have aided or abetted the existing rebellion in the United States; but the right of such disloyal widow, or children, heir or heirs of such soldier, shall be vested in the loyal heir or heirs of the deceased, if any there be."

The joint resolution of March 2, 1867, provides as follows:

"That until otherwise ordered it shall be unlawful for any officer of the United States Government to pay any account, claim, or demand against said Government, which accrued or existed prior to the 13th day of April, A. D. 1861, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion; or in favor of any person who during said rebellion was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim, or demand, until this resolution is modified or repealed: Provided, That this resolution shall not be construed to prohibit the payment of claims founded upon contracts made by any of the Departments, where such claims were assigned or contracted to be assigned prior to April 1, 1861, to creditors of said contractors, loyal citizens of loyal States, in payment of debts incurred prior to March 1, 1861."

The act of March 3, 1873, as embodied in section 4716, Revised Statutes, provides as follows:

"Sec. 4716. No money on account of pension shall be paid to any person, or to the widow,

children, or heirs of any deceased person, who in any manner voluntarily engaged in, or aided or abetted, the late rebellion against the authority of the United States."

Ex-Confederates Enlisted in U. S. Service.

The act of March 3, 1877, as amended by the act of August 1, 1892, provides as follows:

"That the law prohibiting the payment of any money on account of pensions to any person, or to the widow, children, or heirs of any deceased person, who, in any manner, engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterward voluntarily enlisted in either the navy or army of the United States, and who, while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty."

It is held that the above enactment does not apply to claims under the act of June 27, 1890. Accordingly, service in the Confederate army or navy, however involuntary in fact, is in general a complete bar to pension under the act of 1890. Even if the alleged disloyal service were actually involuntary, it is in most instances practically impossible to furnish evidence deemed sufficient to rebut the presumption of actual disloyalty. The more favorable holdings of the Harrison Administration in cases of this class have not been affirmed by the present Administration, but, on the contrary, have been disaffirmed.

Prisoners Enlisted in Confederate Service.

Union prisoners-of-war who enlisted into the Confederate service, even for the purpose of escaping to the Union lines, are in general regarded as having voluntarily aided and abetted the rebellion, and as not entitled to pension under any law. Though the soldier subsequently rejoined his command and was honorably discharged, it is as a rule practically impossible, as the holdings now are, to furnish such evidence as would be regarded as sufficient to rebut and overcome the presumption of disloyalty attaching to the enlistment into the enemy's service.

A decision rendered July 21, 1894, holds:

"1. Enlistment in the Confederate army will be presumed to be voluntary.

"2. Such enlistment and service in the Confederate army is such a voluntary aiding and abetting the rebellion against the authority of the United States as, under section 4716, Revised Statutes, will bar title to pension.

"3. Where such enlistment and service in the Confederate army is sought to be palliated or excused on the ground of duress, that the same was not voluntary, or that it was for the purpose of escape from imprisonment by the so-called Confederacy, the presumption of voluntarily aiding and abetting the rebellion can only be overcome by the positive, direct, and satisfactory evidence, and the uncorroborated testimony of a claimant will not be accepted to overcome such presumption

"4. The fact that a soldier of the United States army was confined as a prisoner-of-war in a Confederate military prison is no excuse for enlisting or serving in the Confederate army."

Acts of Disloyalty.

A public expression of sentiments showing sympathy; making clothes and tents for rebel soldiers; voting for an ordinance of secession; paying taxes to the Confederate Government; or exercising the functions of a justice of the peace, or of any other office, under the Government of a State in rebellion, are all regarded as "aiding and abetting" the rebellion, within the meaning of the law.

Disloyalty Not a Bar.

It is held that the act of February 19, 1879, amendatory of and substantially re-enacting the act of July 19, 1848, and which authorized the payment to certain persons of three months' extra pay for Mexican War service, having failed to place any restrictions as to loyalty during the rebellion, the laws relating to loyalty have no application. (See "Extra Pay.")

CHAPTER XXXIII.

SOLDIERS' HOMES.

National Home for Disabled Volunteer Soldiers—The Soldiers' Home at Washington, D. C.—Out-Door Relief—State Homes.

National Home for Disabled Volunteer Soldiers.

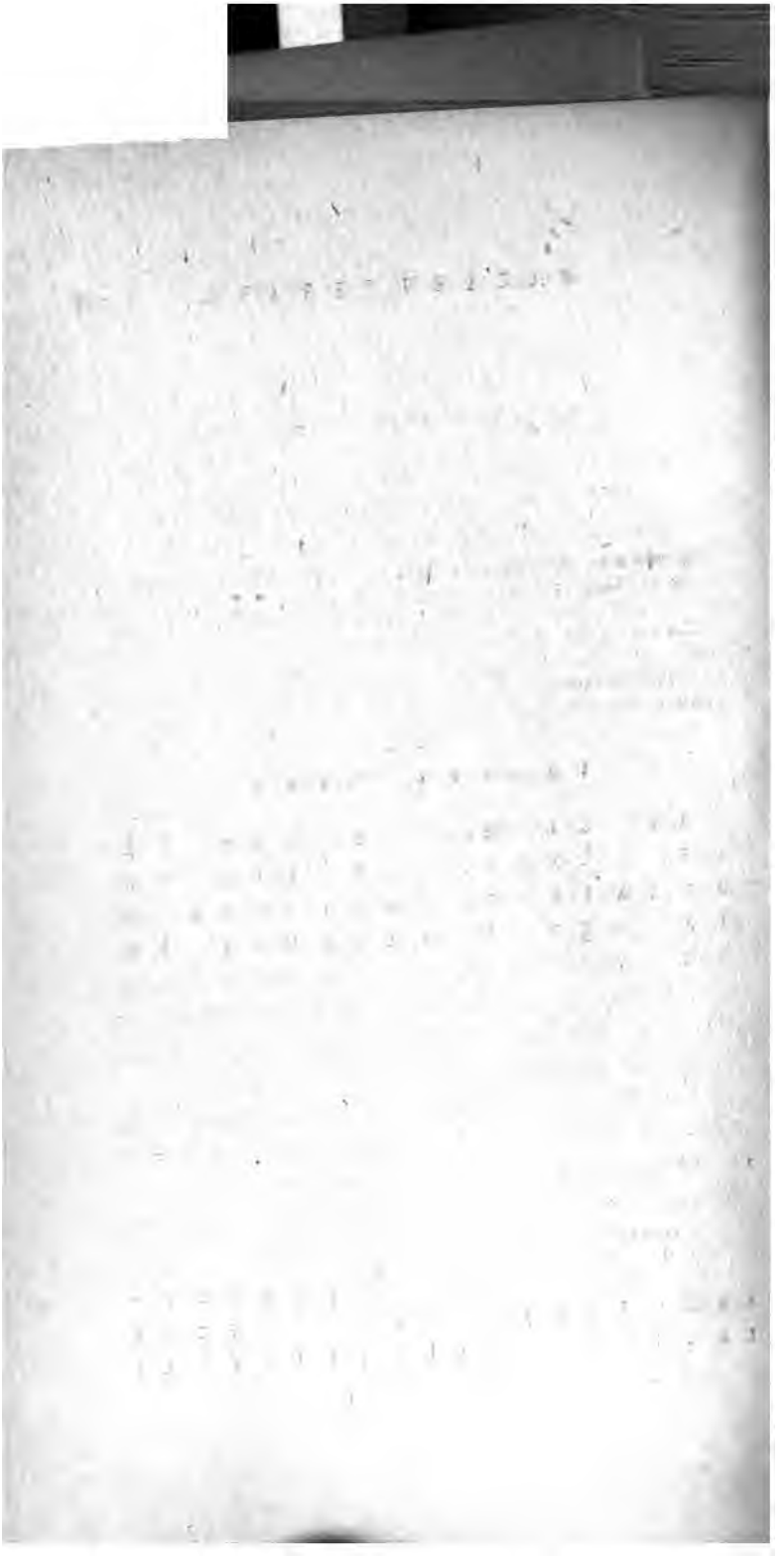
The National Home for Disabled Volunteer Soldiers was established by the act of March 21, 1866. There is a branch of the Home at Togus, Me.; one near Hampton, Va. (P. O.: National Soldiers' Home, Va.); one near Dayton, O. (P. O.: National Military Home, Ohio); one near Milwaukee, Wis. (P. O.: National Home, Wis.); one near Leavenworth, Kan. (P. O.: National Military Home, Kan.); one near Santa Monica, California (P. O.: Soldiers' Home, Los Angeles Co., Cal.); and one at Marion, Grant Co., Ind. (P. O.: National Military Home, Indiana).

All soldiers and sailors serving in the military and naval forces of the United States during the war of the rebellion, and all volunteer soldiers and sailors of the 1812 and Mexican Wars, who are disabled by age, disease, or otherwise, and

by reason of such disability are incapable of earning a living, are entitled to admission into the Home, if their disability was not incurred in service against the United States.

The Soldiers' Home at Washington, D. C.

The Soldiers' Home at Washington, D. C., was established by the act of March 3, 1851, as a home for soldiers of the Regular Army. Twenty years' honorable service, or disability incurred in service and line of duty, incapacitating the soldier for further military service, entitles him to admission to the Home. "Invalid and disabled soldiers" [not including volunteers] "of the War of 1812 and of all subsequent wars," are entitled to admission. No soldier convicted of felony, or other disgraceful or infamous crimes of a civil nature, after his entry in the United States service, is entitled to admission; nor is any soldier who has been a deserter, mutineer, or habitual drunkard, unless he furnishes satisfactory evidence of subsequent service, good conduct, and reformation of character.



CHAPTER XXXIV.

MISCELLANEOUS INFORMATION.

Congressional Privileges—Discharge in Correct Name—Certificate in Lieu of Lost Discharge—Retaining Discharge Certificate—Lost Horses and Equipments—Use and Risk of Horses. Property Lost or Destroyed—Homestead Rights—Burial in National Cemeteries—Headstones Furnished—Refundment of Substitute Commutation—Expenses of Organizing Volunteers. Barred Pension Claims.

Congressional Privilege.

United States Senators and Members of the House of Representatives are privileged to request that the status of pension and other war claims be given the claimants through them. Their communications are, as a matter of courtesy, promptly answered, while communications from the claimants and their attorneys must wait to be considered in their regular order.

If the proofs in a claim are complete, and it is called up by a Senator or Representative, it will be taken up and promptly disposed of. If the claimant does not know what proofs are still lacking to complete the claim, the Senator or Representative can, by calling it up, promptly ascertain the necessary requirements. If the proofs in a claim are not complete, and the claimant

knows that the last call from the Bureau for additional evidence or information has not been complied with, it will not avail anything to have the case called up, because it cannot be finally settled until the requirements are filed.

In calling up pension claims a Senator is restricted to the claims of persons who are bona-fide residents of the State he represents; and each Representative is restricted to the c aim of those who are bona-fide residents o the Congressional District he represents; and neither the Senator nor Representative is pe mitted to call up such cases at the request of an attorney.

In writing to a Senator or Representative with reference to a pension claim, the claim ant should not fail o give him the number or certificate number of the case, and the name of the soldier or sailor, and the company and .egiment or vessel in which he served.

Senators may be addressed at the "United States Senate, Washington, D. C.," and Representatives at the "House of Representatives, Washington, D. C."

Discharge in Correct Name.

The act of April 14, 1890, provides as follows:

"That the Secretary of War and the Secretary of the Navy be, and they are he eby, authorized and required to issue certificates of discharge or orders of acceptance of resignation, upon applica-

tion and proof of identity, in the true name of such persons as enlisted or served under assumed names, while minors or otherwise, in the army and navy during the war of the rebellion, and were honorably discharged therefrom. Application for said certificates of discharge or amended orders of resignation may be made by or on behalf of persons entitled to them; but no such certificate or order shall be issued where a name was assumed to cover a crime or to avoid its consequences.

A person who enlisted under an assumed name to avoid the consequences of desertion from a former enlistment is held not to be entitled to a discharge in his true name.

Missouri Home Guards.

The act of May 15, 1886, provides as follows:

"That the Secretary of War be, and he is hereby, authorized and directed to furnish, upon their several applications therefor, a certificate of discharge to each and every member of the Missouri Home Guard whose claims for pay were adjudicated by the Hawkins Taylor Commission, under the act approved March 25, 1862, and the several acts supplemental thereto." (See page 37.)

Certificate in Lieu of Lost Discharge.

The act of March 3, 1873, as embodied in section 224, Revised Statutes, provides:

'Sec. 224. Whenever satisfactory proof is fur-

nished to the War Department that any non-commissioned officer or private soldier who served in the army of the United States in the late war against the rebellion has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of War shall be authorized to furnish, on request, to such non-commissioned officer of private a duplicate of such certificate of discharge, to be indelibly marked, so tha it may be known as a duplicate; but such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or other allowance, or as evidence in any other case."

The act of February 7, 1890, provides:

"That from and after the passage of this act, whenever satisfactory proof is furnished at the Navy Department that any commissioned officer, regular of volunteer, appointed or enlisted man who served in the navy or the marine corps of the United States in the War of 1812, the Mexican war, or the war of the rebellion, has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of the Navy shall be authorized to furnish to such commissioned officer, regular or volunteer, appointed or enlisted man, a certificate of discharge in lieu thereof.

"Provided, That such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or any other allowance, or as evidence in any other case."

The certificate given is not strictly a duplicate of the original discharge, but a mere certificate of honorable service, a transcript from the official records. It may be obtained whenever the original discharge has become so illegible or mutilated as to be virtually destroyed, as well as when it is actually destroyed or lost.

If the certificate issued as above in lieu of the original discharge be also lost or destroyed, a new certificate or duplicate cannot be obtained.

The certificate as above provided cannot be obtained by the heirs or legal representatives of a deceased soldier or sailor

The loss or destruction of the original discharge is no bar to the collection of pension, bounty, or other allowances.

Retaining Discharge Certificate.

The act of May 21, 1872, provides:

"Any claim agent, attorney, or other person engaged in the collection of claims for pay, bounty, pension, or other allowances for any soldier, sailor, or marine, or for any commissioned officer of the military or naval forces, or who may have been a soldier, sailor, marine, or officer of the regular volunteer forces of the United States, and honorably discharged, who shall retain, without the consent of the owner or owners thereof, or shall refuse to deliver or account for the same upon demand duly made by the owner or owners thereof, or by their agent or attorney, the dis-

charge papers or land warrant of any soldier, sailor, or marine, or commissioned officer which may have peen placed in his hands for the purpose of collecting said claims, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not exceeding $500 or by imprisonment not exceeding six months, or both, at the discretion of the court, and shall thereafter be debarred from prosecuting any such claim in any Executive Department of the Government."

Lost Horses and Equipments.

The act of March 3, 1849, and June 22, 1874, (as embodied in sections 3482 and 3487, Revised Statutes,) and the act of June 25, 1864, relating to claims for horses and equipments that were lost in the military service of the United States prior to and during the late rebellion, after having been several times extended, expired by limitation on January 9, 1884, as to claims arising prior to the war; and on August 13, 1891, as to claims arising during the war.

All such claims as were filed prior to the limitation may be prosecuted to a final termination.

It is held (under a decision of 1878) that if the facts proven are such that by any fair and reasonable inference the property must have been lost in one of the ways specified in the law, it shall be held to have been so lost

Use and Risk of Horses.

Such officers and enlisted men of cavalry volunteers, entering the service in 1861, as furnished their own horses and horse equipments, were entitled to 40 cents per day for the use and risk of the same. This allowance was payable for but one horse at a time, and only in case the horse was the personal property of the officer or soldier. The allowance ceased if the horse was appraised and turned over to the Government; and if the animal became disabled or died, the allowance ceased until the disability was removed or the animal replaced. By July 17, 1862, enlisted men of volunteer cavalry were generally mounted on Government horses, and the act of that date discontinued the allowance to company officers of the volunteer cavalry.

The allowance may still be collected if due.

Property Lost or Destroyed.

The act of March 3, 1849, as amended by the act of March , 1863, and now embodied in section 3483, Revised Statutes, provides:

"Sec. 3483. Every person who sustains damage by the capture or destruction by an enemy, or by the abandonment or destruction by the order of the commanding general, the commanding officer, or quartermaster, of any horse, mule, ox, wagon, cart, sleigh, harness, steamboat or other vessel,

railroad, engine, or railroad car, while such property is in the military service, ei her by impressment or contract; or who sustains damage by the death or abandonment and loss of any horse, mule, or ox, while in the service, in consequence of the failure on the part of the United States to furnish the same with sufficient forage, or whose horse, mule, ox, wagon, cart, sleigh, harness, vessel, railroad, engine, or railroad car is lost or destroyed by unavoidable accident while such property is in the service, shall be allowed and paid the value thereof at the time when such property was taken into the service, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner: Provided, It appears that such loss, capture, abandonment, d struction, or death was without any fault or negligence on the part of the owner of the property, and while the property was actually employed in the service of the United States."

The above is permanent law.

As to the war of rebellion, loyal citizens in loyal States are entitled to compensation for all quartermaster's stores and subsistence actually furnished to or taken by a quartermaster or commissary of subsistence for the use of the United States forces. These are familiarly known as the "4th of July" claims, as they arise under the act of July 4, 1864, and its amendments and extensions. They are collectable now only by special action of Congress, and there is little disposition to appropriate for these claims at this late day.

The so-called "Southern Claims" arising under the act of March 3, 1871, for the compensation of loyal citizens in the rebellious States, for stores and supplies taken by or furnished to the Quartermaster's or Commissary Departments for the use of the United States forces, stand on the same footing as the "4th of July" claims, above, with even smaller chances of collection through the necessary special action of Congress.

The act of March 3, 1885, provides:

"That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service, under the following circumstances:

"First. When such loss or destruction was without fault or negligence on the part of the claimant.

"Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

"Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances.

"And the amount of such loss so ascertained and determined shall be paid out of any money

the Treasury not otherwise appropriated, and shall be in full for all such loss or damage:

"Provided: That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered:

"And provided further, That this act shall not apply to losses sustained in time of war or hostilities with Indians;

"And provided further, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion, shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in the quarters, engaged in the public service in the line of duty;

"And provided further, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction."

Each person not an officer, employed on a vessel of the United States sunk or otherwise destroyed, and whose personal effects have been thereby lost, is entitled to reimbursement to the extent of $60 "bag money." Heirs are entitled if the person has died without receiving the same.

Homestead Rights.

The act of June 8, 1872, as embodied in sections 2304-5-6-7-9, Revised Statutes, provides

"Sec. 2304. Every private soldier and officer who has served in the army of the United States during the recent rebellion, for 90 days, and who was honorably discharged, and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February 13, 1862, and every seaman, marine, and officer who has served in the navy of the United States, or in the marine corps, during the rebellion, for 90 days, and who was honorably discharged, and has remained loyal to the Government, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding 160 acres, or one quarter-section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead, and filing his declaratory statement, within which to make his entry and commence his settlement and improvement.

"Sec. 2305. The time which the homestead settler has served in the army, navy, or marine corps shall be deducted from the time heretofore required [five years] to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without refer-

ence to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

"Sec. 2306. Every person entitled under the provisions of section 2304 to enter a homestead, who may have heretofore entered, under the homestead laws, a quantity of land less than 160 acres, shall be permitted to enter so much land as, when added to the quantity pr vi usly entered, shall not exceed 160 acres.

"Sec. 2307. In case of the death of any person who would be entitled to a homestead under the provisions of section 2304, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvements therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

"Sec. 2309. Every soldier, sailor, marine, officer, or other person coming within the provisions of section 2304, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in pre-emption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlement and improvements on the same, and thereafter fulfill all the requirements of law."

It is held that the right to additional homestead (section 2306, above) is not subject to assignment or lien; it cannot be transferred and exercised by another.

For information concerning the public lands and the terms and conditions under which they may be had, address the "Commissioner of the General Land Office," Washington, D. C.

There are no land-warrants issued for service in the war of the rebellion.

Burial in National Cemeteries.

Section 4878, Revised Statutes, provides:

"Sec. 4878. All soldiers, sailors, or marines dying in the service of the United States, or dying in a destitute condition, after having been honorably discharged from the service, o who served during the late war, either in the regular or volunteer forces may be buried in any national cemetery free of cost. The production of the honorable discharge of a deceased man shall be sufficient authority for the superintendent of any cemetery to permit the interment."

Headstones Furnished.

The act of February 3, 1879, provides:

"That the Secretary of War is hereby authorized to erect headstones over the graves of sold ers who served in the regular of volun eer army of the United States during the war for the Union, and who have been buried in private village or

city cemeteries, in the same manner as provided by the law of March 3, 1873, for those interred in national military cemeteries;

"And for this purpose, and for the expenses incident to such work, so much of the appropriation of $1,000,000, made in the act above mentioned, as has not been expended, and as may be necessary, is hereby made available.

"The Secretary of War shall cause to be preserved in the records of his Department the names and places of burial of all soldiers for whom such headstones shall have been erected by authority of this or any former acts."

Refundment of Substitute Commutation.

The act of February 28, 1867, provides:

"Whereas certain persons, drafted into the military service under the calls of the President of the United States, made February 1, 1864, and March 14, 1864, paid the sum of $300 each, being the amount of commutation fixed for such service under the fifth section of the amendatory enrollment act of February 24, 1864, and the same persons were afterward again drafted, under the call of December 19, 1864, (being within one year of the previous draft and before the filling of the quotas assigned under the two calls first named above,) and were then required to enter the service or furnish substitutes; and whereas the true intent and meaning of the fifth section of the amendatory act aforesiad was to exempt persons thus paying commutation from further draft until that quota should be filled, and not exceeding one year: Therefore,

"Be it enacted, etc., That the Secretary of War is hereby authorized and directed to refund to each person drafted as aforesaid, who paid commutation and was also required to enter the service or furnish a substitute as aforesaid, the sum of $300, being the sum of money so as aforesaid paid by him; and there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, a sum sufficient to make such payments.

"Sec. 2. And be it further enacted, That the Secretary of War is authorized and required to refund from the commutation money the amount (not exceeding $300 in any one case) paid by any person drafted during the late war who furnished a substitute or paid commutation money wherever it shall appear that under the decisions and rules of the War Department governing at the time the said person was entitled to discharge from the obligation to render personal service under the draft for which he paid money or furnished a substitute, and to refund, in like manner, in all cases wherein it shall appear that a person so having paid commutation money or furnished a substitute was not legally liable to draft: Provided, That this section shall apply only to claims received at the War Department prior to its passage."

Claims under the first section, above, may still be presented and prosecuted, but claims under the second section must have been presented before March 3, 1871, and are now barred.

Expenses of Organizing Volunteers.

Section 3489, Revised Statutes, provides:

"No claims against the United States, for collecting, drilling, or organizing volunteers for the war of the rebellion, shall be audited or paid unless presented before the 30th day of June, 1874.
* * *

Barred Pension Claims.

The act of July 4, 1864, and subsequent enactments, as embodied in section 4717, Revised Statutes, provided:

"Sec. 4717. No claim for pension not prosecuted to a successful issue within five years from the date of filing the same shall be admitted without record evidence from the War or Navy Department of the injury or the disease which resulted in the disability or death of the person on whose account the claim is made: Provided, That in any case in which the limitation prescribed by this section bars the further prosecution of the claim, the claimant may present, through the Pension Office, to the Adjutant-General of the Army or the Surgeon-General of the Navy, evidence that the disease or injury which resulted in the disability or death of the person on whose account the claim is made originated in the service and in the line of duty; and if such evidence is deemed satisfactory by the officer to whom it may be submitted, he shall cause a record of the fact so proved to be made, and a copy of the same to be transmitted to the Commissioner of Pensions, and the bar to the prosecution of the claim shall thereby be removed."

The above was repealed by the arrears act of January 25, 1879, which provided:

"Sec. 3. That section 4717 of the Revised Statutes of the United States, which provides [see above] be, and the same is hereby, repealed.

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SUPPLEMENT.

THE NATIONAL TRIBUNE SOLDIER'S HANDBOOK.

The Spanish War.

The act of April 22, 1898, provides:

"Sec. 12. That all officers and enlisted men of the Volunteer Army, and of the Militia of the States when in the service of the United States, shall be in all respects on the same footing as to pay, allowances and pensions as that of officers and enlisted men of corresponding grades in the Regular Army."

But wholly independent of the above provision the soldiers and sailors, both Regulars and Volunteers, of the Spanish war, would in any event come under the general law, which covers all claims arising from disability incurred in service since March 4, 1861. (See Chapter II., page 27, et seq.)

In case of death in the service or after discharge from causes due to service and line of duty, the surviving widow, children under 16, or dependent mother, father, or brothers and sisters under 16, are entitled in the order named. (See Chapters IV. and V., pages 57 and 77, et seq.)

Regular Army and Navy.

Officers and men of the Regular Army and Navy in time of peace, and in the various Indian wars and disturbances, etc., and the heirs of

such, come under the general pension law. (See Chapters II., IV. and V., pages 27, 57, and 77, et seq.)

Remarriage of Dependent Mothers.

The decision rendered Aug. 18, 1892, holding that "a mother's remarriage prior to filing application under the act of June 27, 1890, is no bar to pension under said act" has apparently been overruled by a rule of practice of the Pension Bureau approved by the Secretary of the Interior, April 9, 1898. (See Chapter V, page 81.)

Desertion Affecting Pensionable Status.

A decision rendered June 21, 1898, holds: "First. In claims for pension under the acts of Jan. 29, 1887, June 27, 1890, and July 27, 1892, an honorable discharge from all enlistments for service in the particular war to which these acts refer, is a prerequisite to pension.

"Second. In claims for pension under sections 4692 and 4693, Revised Statutes (the general pension law), on account of disability incurred in the line of duty during a term of enlistment from which the claimant deserted, the claim should be rejected, for the reason that there is no period from which the pension could commence, as claimant had never been discharged from such term of service; and for the further reason that claimant having violated and repudiated his said contract of enlistment, he thus forfeited all right to any benefits that were incident to such enlistment.

"Third. If the claim for invalid pension under sections 4692 and 4693, Revised Statutes (the general pension law), is based upon disability incurred in the line of duty during a term of enlist-

ment from which the claimant was legally discharged, a desertion from a subsequent enlistment, of itself, is not a bar to pension." * *

(The foregoing is made clearer by a later decision of Aug. 13, 1898, by which it is declared that in such cases the only loss to the claimant is denial of the pension for the period for which the soldier or sailor could lawfully have been held to service under the subsequent enlistment from which he deserted; and this loss is operative only in claims for invalid pension filed before July 1, 1880.)

"Fourth. If the disability was incurred in the service under a subsequent enlistment, while the claimant was a deserter from a prior enlistment (the period of) which had not terminated prior to such re-enlistment, the claim should be rejected on the ground that the disability was not incurred in the line of duty, but while claimant was absent from his proper command in violation of his former contract of enlistment."

A decision rendered Nov. 25, 1898, sets out that if it is shown that the disability claimed on did not originate until after the term of a former enlistment from which the soldier deserted would have expired, it is immaterial whether the re-enlistment was before or after the former term would have expired.

In this connection it is held by a decision rendered Sept. 6, 1898, that "a contract of enlistment made by a minor under 16 years of age is either void or voidable, and if he repudiate the same by deserting he cannot be held to the performance of further service thereunder (though he may be punished for the offense of deserting), and his

re-enlistment, within the term covered by his former contract of enlistment, is not thereby invalidated." This decision is based on Sec. 1118, Revised Statutes, which provides that "no minor under the age of 16 years * * shall be enlisted or mustered into the military service." (See Chapter XXXI, page 376.)

Deserter's Release.

A "deserter's release" from the Army, obtained under the act of April 11, 1890, while not regarded by the War Department as a formal discharge, is held by the Interior Department, for pensionable purposes, to be equivalent to a discharge. (See Chapter XXXI, page 379.)

Burial in National Cemeteries.

It is held that Sec. 4878, Revised Statutes, authorizing the burial of certain "soldiers, sailors or marines" in National cemeteries free of cost, applies to those who served in the Spanish war. (See Chapter XXXIV, page 401.)

Cashing Pension Checks.

On Oct. 25, 1898, the Postoffice Department issued instructions to postmasters at small places (money-order postoffices) where there are no banks, that they may cash pension checks from the money-order funds.

Soldiers' Homes.

It is proposed in Congress to make all disabled volunteer soldiers of the Spanish war eligible to admission to the National Home. Men of the Regular Army are, of course, eligible to the Soldiers' Home at Washington, D. C., even though enlisted only for service in the Spanish war.

Bounty, War of Rebellion.

"Substitutes of persons liable to draft" but not actually drafted, are not entitled to bounty, even though enlisted for three years. (See Chapter XXIV, page 301.)

Loss of Sight of Eye.

Since Dec. 4, 1891, the rate of invalid pension under the general law for loss of sight of an eye has been $12 per month. (See Chapter III., page 51.)

Marriage.

The following is a provision of an act of March 3, 1899, amending section 4766, Revised Statutes:

"That hereafter no pension under any law of the United States shall be granted, allowed, or paid to the widow of a soldier, sailor, officer, naval or military, marine, marine officer, or any other male person entitled to a pension under any law of the United States, unless it shall be proved and established that the marriage of such widow to the soldier, sailor, officer, marine, or other person on account of whose service the pension is asked, was duly and legally contracted and entered into prior to the passage of this act, or unless such wife shall have lived and cohabited with such soldier, sailor, officer, marine, marine officer, or other person continuously from the date of the marriage to the date of his death, or unless the marriage shall take place hereafter and prior to or during the military or naval service of the soldier, sailor, officer, marine, or other person on account of whose service the pension is asked or claimed. This proviso shall not apply to or affect the widow of any soldier, sailor,

marine, officer, or marine officer serving or who has served in the war between the United States and the Kingdom of Spain."

It will be noted that the act prescribes three alternative conditions, the establishment of any one of which is sufficient. The widow of a soldier of the war of the rebellion is not debarred from pension under the general law by this act if married to the soldier after March 3, 1899, provided she proves that they lived together continuously to the date of his death. (See Chapter IV., page 62; also, Chapter VII.)

Legitimacy.

It is held by a decision rendered Jan. 30, 1899, that unless the slave marriage of parents of a colored soldier was ratified according to law, the soldier cannot be regarded as a legitimate child, and hence the dependent father is not entitled to pension. (See Chapter V., page 82.)

Part Pension to Wives and Children.

An act of March 3, 1899, provides:

"That section 4766, Title 57, of the Revised Statutes of the United States, be, and the same is hereby, amended by adding thereto the following additional provisions and provisos, to wit: Provided further, That in case a resident pensioner of the United States shall for a period of over six months desert his lawful wife, she being a woman of good moral character and in necessitous circumstances, or, if he have no lawful wife, shall desert his legitimate minor child or

children under 16 years of age, or his permanently helpless and dependent child; the Commissioner of Pensions is hereby directed, upon being satisfied by competent evidence of such desertion, to cause one-half of the pension due or to become due said pensioner during the continuance of such desertion to be paid to the wife, or in case there is no wife, to the legal guardian of the child or children: Provided further, That when a soldier or sailor enters into a State Home for soldiers or sailors as an inmate thereof, one-half of his pension accruing during his residence therein shall be paid to his wife, she being a woman of good moral character and in necessitous circumstances, or if there be no wife, then to his child or children under 16 years of age, or his permanently helpless and dependent child, if any, unless such wife and children shall also be inmates of the same institution or of some home provided for the wives and children of soldiers and sailors: Provided further, That if any such pensioner is or shall become an inmate of a National Soldiers' Home one-half of the pension drawn in his behalf or to which he may become entitled during his residence therein shall be paid by the treasurer of that institution to such pensioner's wife, she being in necessitous circumstances and a woman of good moral character, or, if there be no wife, to the legal guardian of the minor child or children, or the permanently dependent and helpless child or children of such pensioner, on the order of the Commissioner of Pensions. * * *

"In all cases the questions of desertion, entrance into a home, necessitous circumstances, and of good moral character shall be ascertained

and determined by the Commissioner of Pensions under such rules and regulations as he shall prescribe, and the treasurers or Governors of the several Soldiers and Sailors' Homes shall be advised of such action from time to time." (See Chapter XVIII., page 195.)

Navy Pensioners.

An act of March 3, 1899, amends section 4813, Revised Statutes, to read as follows: "And whenever any officer, seaman, or marine entitled to a pension is admitted to the Naval Home at Philadelphia, or to a naval hospital, his pension, while he remains there, shall be deducted from his accounts and paid to the Secretary of the Navy for the benefit of the fund from which such home or hospital, respectively, is maintained." (See Chapter XVIII., page 197.)

Spanish War Pay.

Under an act of July 7, 1898, Volunteers are entitled to United States pay "from the day on which they had their names enrolled for service in the Volunteer Army of the United States and joined for duty." Prior to this law many organizations were not entitled to and did not receive United States pay except from a date on which they assembled at battalion, regimental or State rendezvous.

By a decision of the Comptroller of the Treasury, Jan. 17, 1899, all Volunteers who were paid by United States only from date of muster into United States service, because of their having

been paid by the State prior to that date, or the amount of whose State pay before United States muster was deducted from their United States pay, are entitled to full United States pay without deduction from date of enrollment.

The following are provisions of acts of March 3, 1899:

"The Secretary of the Navy is hereby authorized to pay to such officers as were appointed for temporary service in the Navy during the late war with Spain, and who entered upon the performance of duty prior to the date on which they accepted their commissions and executed oaths of office, the pay of their grades for the interval during which they were so employed, such payments to be made from the appropriation 'Pay of the Navy'."

"For pay of the company commissioned officers in each regiment of the special or immune regiments their salaries from the time each organized company reported at rendezvous as a company for service until said officers were commissioned; and for pay of the regimental commissioned officers their salaries from the time the regiment was mustered into service until said officers were commissioned, $75,000, or so much thereof as may be necessary: Provided, That such company and regimental officers shall be paid only from the time when they personally reported for duty."

Spanish War Extra Pay.

The following is a provision of an act of March 3, 1899, relative to "the temporary force of the Navy," including Naval Reserves, those enlisted

in the Revenue Cutter service for the war, marines, and all others enlisted for the war:

"The officers and enlisted men comprising the temporary force of the Navy during the war with Spain who served creditably beyond the limits of the United States, and who have been or may hereafter be discharged, shall be paid two months' extra pay; and all such officers and enlisted men of the Navy who have so served within the limits of the United States, and who have been or may hereafter be discharged, shall be paid one month's extra pay."

The following provision of an act of March 3, 1899, relative to enlisted men entering the Regular Army for the war is held to be applicable to enlisted men in the Volunteer Army equally as well, provided they did not receive furlough (with organization) preliminary to discharge, as was the practice prior to Jan. 12, 1899:

"That all enlisted men in the Regular Army who enlisted subsequent to the declaration of war for the war only and mustered out of the service who have served honestly and faithfully beyond the limits of the United States shall be paid two months' extra pay on muster out and discharge from the service, and all enlisted men in the Regular Army who enlisted subsequent to the declaration of war for the war only and mustered out of the service who have served honestly and faithfully within the limits of the United States shall be paid one month's extra pay on muster out and discharge from the service from any money in the Treasury not otherwise

appropriated, said moneys to be immediately available."

The following provision of an act of March 3, 1899, is applicable only to the legal heirs or representatives of Volunteers, not of Regulars:

"That the act of Jan. 12, 1899, be, and it is hereby, amended so as to authorize the payment to the legal heirs or representatives of the officers and enlisted men who died or were killed, or who may die in the service, the extra pay provided for in that act for officers and enlisted men who have been or are to be mustered out."

One month's extra pay is allowed if the soldier's service was only within the limits of the United States; two months' extra pay if any portion of his service was beyond the limits of the United States.

Reimbursement for Transportation and Burial Expenses.

The following provision in the general deficiency appropriation bill, approved March 3, 1899, applies only to cases arising before the date of the act and since Jan. 1, 1898:

"That in all cases where an officer or an enlisted man in either the Army, Navy, or Marine Corps of the United States, or contract surgeon or trained nurse in the employ of the Government has died while on duty away from home since the first day of January, 1898, and the remains have been taken home and buried at the expense of

the family or friends of the deceased, the parties who paid the cost of transportation and burying such remains shall be repaid at the expense of the United States by the Secretary of the Treasury, not to exceed what it would have cost the United States to have transported the remains to their homes."

The following provision in the Army appropriation law, approved March 3, 1899, applies to future cases:

"That in all cases where they would have been lawful claims against the Government, reimbursement may be made of expenses heretofore or hereafter incurred by individuals of burial and transportation of remains of officers, including acting assistant surgeons, not to exceed what is now allowed in the cases of officers, and for the reimbursement in the cases of enlisted men of what is now allowed in their cases, may be paid out of the proper funds appropriated by this act, and that the disbursing officers shall be credited with such reimbursement heretofore made."

Fines Refunded.

All fines or forfeitures imposed by summary court-martial, from April 21, 1898, to Aug. 16, 1898, inclusive, may be recovered. (General Order 174, A. G. O., Nov. 2, 1898.)

Refilings Under Act of May 9, 1900.

Commissioner Evans has decided that it is not necessary to refile an invalid claim in a pending case under the above law, but it is necessary in a rejected case. Widows' claims must be refiled.

SUPPLEMENT II.

Revenue Service.

It is held not sufficient to confer pension title on officers and men of the Revenue Cutter Service that the Revenue Marine was under orders to co-operate with the navy; there must have been actual co-operation of claimant's vessel with the navy. (10 P. D., 401; case of Daniel M. Means, January 24, 1900.) (See Chapter II, page 39.)

Rates for Deafness.

Under ruling No. 257 of the Commissioner of Pensions, dated February 28, 1894, degrees of deafness less than nearly total of one ear have not since been regarded as pensionable under the general law. (See Chapter III, pages 52-3.)

Prior Marriage.

Where the evidence of prior marriage of the soldier or sailor is no better than the evidence of death or divorce of the former wife, positive evidence of the legal termination of the prior marriage will not be required and the validity of marriage to the widow-claimant will be presumed; as, when the only testimony of former marriage and death or divorce of former wife rests upon the statements of the deceased soldier or sailor. (10 P. D., 423; case of Buchanan, February 23, 1900.) (See Chapter IV, page 63.)

Legitimacy of Children.

It is held that notwithstanding that the law of a State declares legitimate the children of a marriage null and void because of a prior marriage

of one of the parents not legally terminated, such children cannot be regarded as pensionable, because "a pensionable status is to be determined wholly by the laws of the United States, which limit a minor's title to one which was or could have been in the legal wife (widow)." The mother of the children not being the legal widow, the children are not entitled. (10 P. D., 227, case of Pulver, May 31, 1899.) (See Chapter IV, page 66.)

Permanently Helpless Children.

The "permanent helplessness" necessary to entitle children to continuance of pension after reaching the age of 16 need not be of a mental character, but may be purely physical. (10 P. D., 224; case of Rodkey, May 31, 1899.) (See Chapter IV, page 70; also Chapter VI, page 106.)

Marriage and Divorce—Decree of Nullity.

A decree of nullity which by its terms and according to the State law takes effect only from date of passage by the Court, can not operate to give pensionable status to a widow obtaining such decree as to a previous marriage and after the death of the soldier. (10 P. D., 238; case of Fuller, June 20, 1899.)

A decree of nullity which appears to have been procured through fraud, or otherwise improperly procured, and based on alleged facts not sustained by satisfactory evidence, will not be recognized in considering a widow's pension title. (10 P. D., 284; case of Vaughn, August 25, 1899.) (See Chapter IV, page 70.)

Dependent Parents' Pension Title.

It is now held that "the remarriage of a dependent mother prior to the act of June 27, 1890, is not a bar to pension under section 4707, Revised Statutes [the general law], as amended by the first section of said act." (10 P. D., 244; case of Elizabeth Darling, June 21, 1899.)

This decision holds that pension title of dependent parents is derived only from the general law as amended by the act of June 27, 1890, section 1; that the act of June 27, 1890, did not confer pension title on dependent parents separate and distinct from the general law, but merely amended the general law as to them.

A supplemental decision in the same case (September 22, 1899, 10 P. D., 299) holds that the rank of the soldier or sailor is to be considered in all pension claims of dependent parents whether based on the general law alone or on the general law as amended by the act of June 27, 1890, section 1. (See Chapter V, pages 80-1-3-4; also see page 450.)

Missouri Home Guards—Pension Title, Act of June 27, 1890.

In determining the term of U. S. service of the Missouri Home Guards of 1861, the time allowed and paid for on the report of the Hawkins Taylor Commission of 1862-3 will govern, notwithstanding that there may have been an apparent service of greater length if the recognized dates of enlistment and discharge are taken as guides. (See Chapter VI, page 111.)

Arrears of Pension—Children's Title, General Law.

Under date of May 26, 1900, the Secretary of the Interior instructed the Commissioner of Pensions that all persons claiming children's pensions under the general law must have been under sixteen at the date of their application, unless they were sixteen on July 1, 1880. (See Chapter XIII, page 149.)

Arrears of Pension—Act of June 27, 1890.

It is held that in case an invalid pension was granted under the act of June 27, 1890, only from date of filing a second or third or subsequent application, the widow has the same right that her husband, the pensioner, had to contest the rejection of his applications filed prior to that on which his pension was granted. (10 P. D., 321; case of Heinrichs, September 22, 1899.) (See Chapter XIII, page 151.)

Examination of Papers in Pension Bureau.

The pension appropriation act of April 4, 1900, provides:

"That the reports of the Special Examiners of the Bureau of Pensions shall be open to inspection and copy by the applicant or his attorney, under such rules and regulations as the Secretary of the Interior may prescribe." (See Chapter XV, page 167.)

Pension Money.

The question frequently arises as to whether pension money, or property bought with pension money, is not made exempt from taxation seizure for debt, etc. The following is the only United

States statute bearing upon the subject, section 4747 of the Revised Statutes:

"Sec. 4747. No sum of money due, or to become due, to any pensioner shall be liable to attachment, levy or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

Traveling Allowances.

It is held that a soldier discharged while absent on furlough is not entitled to travel-pay allowance.

There is no law authorizing the payment of railroad fare and other expenses of a soldier traveling on furlough.

An enlisted man discharged to accept a civil appointment is held not entitled to travel-pay to place of enlistment.

An act of June 7, 1900, provides:

"Be it enacted, etc., That when the Secretary of War, in the exercise of his discretion, has directed the discharge of any enlisted men of the Regular or Volunteer forces of the Army, and the orders or instructions directing such discharge stated that such enlisted men were entitled to travel pay, such order or instruction shall be sufficient authority for the payment to the soldiers of the traveling allowances provided for by section 1290 of the Revised Statutes. And officers of the Pay Department of the Army shall have credit in the settlement of their accounts for all payments made in obedience to said or-

ders or instructions of the Secretary of War: Provided, That soldiers discharged under such orders or instructions, which stated that such soldiers were entitled to travel pay, and who were absent by authority on the date of the muster-out of their regiments or of discharge, are entitled to and will be paid traveling allowances from place of muster-out of their regiments or the places designated in the final statements as the place of discharge to the place of enlistment or enrollment: Provided further, That the provisions of this act shall apply only to cases that have arisen or shall arise under orders or instructions for discharge with travel pay issued between April 21, 1898, and the date of the passage of this act: Provided further, That it shall be held as applying to any case in which the order directing the discharge did not set forth that the soldier was not entitled to travel pay."

It will be noted that this legislation concerns only those who have served in the Army since April 21, 1898, and prior to the date of the act.

The Army appropriation act of May 26, 1900, enacts the following as amendment of sections 1289 and 1290, Revised Statutes:

"That hereafter when an officer shall be discharged from the service, except by way of punishment for an offense, he shall receive for travel allowances from the place of his discharge to the place of his residence at the time of his appointment or to the place of his original muster into the service, four cents per mile; and an enlisted man when discharged from the service, except

by way of punishment for an offense, shall receive four cents per mile from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service: Provided further, That for sea travel on discharge, to, from, or between our island possessions, actual expenses only shall be paid to officers and transportation and subsistence only shall be furnished to enlisted men." (See Chapter XXVII, pages 347-8.)

Desertion—Pensionable Status.

When a pension was granted under a practice not regarding a charge of desertion as a bar under certain circumstances, the discontinuance of such practice does not operate as a reason for discontinuance of the pension, and the pensioner, moreover, has the right to have considered and adjudicated any claim he may make for increase of pension on the pensioned disability. (10 P. D., 232; case of William Wilson, June 8, 1899; 10 P. D., 249; case of Charles E. Borthwick, June 21, 1899.) (See Chapter XXXI, page 370.)

Desertion—Navy and Marine Corps.

The act of May 24, 1900, repealed the limitation to the act of August 14, 1888, providing for the removal of charges of desertion and payment of arrears of pay in cases of enlisted or appointed men of the Navy or Marine Corps in the war of the rebellion. The law had expired by limitation on August 14, 1893. The law of 1888 as now re-enacted without limitation is as follows:

"Be it enacted, etc., That the charge of desertion now standing on the rolls and records of

the Navy or Marine Corps against any appointed or enlisted man of the Navy or Marine Corps who served in the late war may in the discretion of the Secretary of the Navy be removed in all cases where it shall be made to appear to the satisfaction of the Secretary of the Navy from such rolls and records or from other satisfactory evidence,

"That any such appointed or enlisted man served faithfully until the expiration of his term of enlistment,

"Or until the first day of May, 1865, having previously served six months or more,

"Or was prevented from completing his terms of service by reason of wounds received or disease contracted in the line of duty, but who, by reason of absence from his command at the time he became entitled to his discharge, failed to be mustered out and to receive a discharge from the service:

"Provided, That no such appointed or enlisted man shall be relived under this section who, not being sick or wounded, left his command, without proper authority, while the same was in presence of the enemy.

"Sec. 2. That the Secretary of the Navy is hereby authorized to remove the charge of desertion standing on the rolls or records of the Navy or Marine Corps against any appointed or enlisted man of the Navy or Marine Corps who served in the late war, in all cases where it shall be made to appear, to the satisfaction of the Secretary of the Navy, from such rolls or from other satisfactory evidence,

"That such appointed or enlisted man charged with desertion or with absence without leave,

after such charge of desertion or absence without leave, and within a reasonable time thereafter, voluntarily returned to and served in the line of his duty until he was mustered out of the service, and received a certificate of discharge therefrom.

"Or while so absent, and before the expiration of his term of enlistment, died from wounds, injury, or disease received or contracted in the service and in the line of duty.

"Sec. 3. That the charge of desertion now standing on the rolls or records of the Navy or Marine Corps against any appointed or enlisted man of the Navy or Marine Corps who served in the late war, by reason of his having enlisted at any station or on board of any vessel of the Navy without having first received a discharge from the station or vessel in which he had previously served, shall be removed in all cases wherein it shall be made to appear to the satisfaction of the Secretary of the Navy from such rolls and records, or from other satisfactory testimony, that such re-enlistment was not made for the purpose of securing bounty or other gratuity that he would not have been entitled to, had he remained under his original term of enlistment:

"Provided, That no appointed or enlisted man shall be relived under this act who, not being sick or wounded, left his command without proper authority while the same was in the presence of the enemy, or who, at the time of leaving his command, was in arrest or under charges, or in whose case the period of absence from the service exceeded three months.

"Sec. 4. That in all cases where the charge

of desertion shall be removed under the provisions of this act from the record of any appointed or enlisted man of the Navy or Marine Corps who has not received a certificate of discharge it shall be the duty of the Secretary of the Navy to issue to such appointed or enlisted man, or in case of his death, to his heirs or legal representatives, a certificate of discharge.

"Sec. 5. That when the charge of desertion shall be removed under the provisions of this act from the record of any appointed or enlisted man of the Navy or Marine Corps, such man, or, in case of his death, the heirs or legal representatives of such man, shall receive all pay and bounty which may have been withheld on account of such charge of desertion or absence without leave:

"Provided, however, That this act shall not be so construed as to give to any such man as may be entitled to relief under the provisions of this act, or, in case of his death, to the heirs and legal representatives of any such man, the right to receive pay and bounty for any period of time during which such man was absent from his command without leave of absence:

"And provided further, That no appointed or enlisted man, nor the heirs or legal representatives of any such man, who served in the Navy or Marine Corps a period of less than six months shall be entitled to the benefit of the provisions of this act. [Limitation here stricken out.]

"Sec. 6. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed." (See Chapter XXXI, page 374.)

Disloyalty—Dependent Parents.

The act of April 18, 1900, provides:

"That Section 4716 of the Revised Statutes be, and the same is hereby, repealed so far as the same may be applicable to the claims to pension of dependent parents of soldiers, sailors, and marines who served in the army or navy of the United States during the war with Spain."

This removes the bar to ex-Confederates, and the wives or widows of such, obtaining pension on account of sons dying from disability incurred in service in the Spanish war. (See Chapter XXXII, pages 381-2.)

Soldiers' Homes.

The Army appropriation act of May 26, 1900, provides:

"Hereafter the following persons only shall be entitled to the benefits of the National Home for Disabled Volunteer Soldiers and may be admitted thereto upon the order of a member of the Board of Managers, namely: All honorably discharged officers, soldiers, and sailors who served in the Regular or Volunteer forces of the United States in any war in which the country has been engaged, who are disabled by disease, wounds, or otherwise, and who have no adequate means of support, and by reason of such disability are incapable of earning their living."

This renders eligible to admission to the Home the soldiers and sailors of all wars of the United States, either past or future. (See Chapter XXXIII, page 386.)

Soldiers' Homesteads.

By a decision of the United States Supreme Court in 1896 in the case of Webster vs. Luther, 163 U. S. 331, it was declared that additional homestead rights conferred by section 2306, Revised Statutes, are assignable, and that the assignee succeeds to all the rights of the original beneficiary relative thereto. (See Chapter XXXIV, pages 400-1.)

Spanish War Extra Pay.

Service on a transport between U. S. ports, even though the vessel actually passed beyond the three-mile limit and hence strictly outside of the limits of the United States, is held not to be service "beyond the limits of the United States," within the meaning of the Spanish war extra-pay acts of January 12 and March 3, 1899.

Discharge for disability existing before enlistment is not a bar to the extra pay unless the disability was fraudulently concealed at enlistment.

Discharge for venereal disease is not a bar to to the extra pay unless discharge was directed, for disability due to misconduct.

Heirs of an officer or enlisted man of the Volunteer Army who died while on furlough awaiting muster-out, are not entitled to the extra pay allowed heirs of those dying in service, it being held that death was not "in the service" within the meaning of the law.

It is held that only those Regulars may be regarded as enlisted "for the war only" as were enlisted after April 26, 1898 (and prior to October 26, 1898), and hence only these are entitled to extra pay under the act of March 3, 1899.

The Army appropriation act of May 26, 1900, provides:

"That the act approved January 12, 1899, granting extra pay to officers and enlisted men of the United States Volunteers, shall extend to all volunteer officers of the general staff who have not received waiting-orders pay prior to discharge, at the rate of one month to those who did not serve beyond the limits of the United States and two months to those who served beyond the limits of the United States; and officers and enlisted men of volunteer organizations who have served honestly and faithfully in the Volunteer Army of the United States during the war with Spain and have been honorably discharged without furlough, or by reason of their services being no longer required, or at any time by reason of wounds received, or disability contracted in the service and in the line of duty, and who have not received the extra pay granted in said act, or in subsequent acts of Congress supplemental thereto; and this act shall be deemed to apply to officers of volunteers who resigned and enlisted men of volunteers who were discharged upon their own applications subsequent to the issue of orders for the muster-out of their organizations and prior to the dates of muster-out."

It is understood that the foregoing enactment will be construed as making the following classes of new beneficiaries:

1. Volunteer officers of the general staff who did not receive awaiting orders pay before muster-out.

2. Officers of volunteer organizations who

were discharged for disability, or who without leave of absence or awaiting orders, or extra pay under the act of January 12, 1899, were discharged because their services were no longer required. This will include officers who were on duty during the furlough period of their organization.

3. Officers and enlisted men of Volunteer organizations who resigned or were discharged upon their own applications before the muster-out of their organization but after the issuance of orders for its muster-out. (See page 460.)

Transportation and Burial Expenses—Spanish and Philippine Wars.

In cases where only $35 was allowed as reimbursement for expenses of transportation home and burial of remains of soldiers who died in service, additional reimbursement may be collected, under a later decision; but in no case may the reimbursement exceed in amount what the cost would have been to the Government.

It is held that if an officer or enlisted man died while at home on furlough or leave, no reimbursement or commutation of burial expenses can be allowed. (See page 462.)

Amendment of Pension Act of June 27, 1890.

The following is the act of May 9, 1900, amending the act of June 27, 1890:

Be it enacted, etc., That sections 2 and 3 of an act entitled "An act granting pensions to soldiers and sailors who are incapacitated for the performance of manual labor, and providing for pensions to widows, minor children, and dependent parents," be, and the same are hereby

amended so as to read as follows: (The amendments are in heavy type.)

"Sec. 2. That all persons who served ninety days or more in the military or naval service of the United States during the late war of the Rebellion and who have been honorably discharged therefrom, and who are now or may hereafter be suffering from any mental or physical disability or disabilities of a permanent character, not the result of their own vicious habits, which so incapacitates them from the performance of manual labor as to render them unable to earn a support, shall, upon making due proof of the fact, according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States, and be entitled to receive a pension not exceeding $12 per month and not less than $6 per month, proportioned to the degree of inability to earn a support; and in determining such inability each and every infirmity shall be duly considered, and the aggregate of the disabilities shown be rated, and such pension shall commence from the date of the filing of the application in the Bureau of Pensions, after the passage of this act, upon proof that the disability or disabilities then existed, and shall continue during the existence of the same: Provided, That persons who are now receiving pensions under existing laws, or whose claims are pending in the Bureau of Pensions, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto, receive the benefits of this act; and nothing herein contained shall be so construed as to prevent any pensioner thereunder from prose-

cuting his claim and receiving his pension under any other general or special act: Provided, however, That no person shall receive more than one pension for the same period: And provided further, That rank in the service shall not be considered in applications filed under this act.

"Sec. 3. That if any officer or enlisted man who served ninety days or more in the Army or Navy of the United States during the late war of the Rebellion, and who was honorably discharged, has died, or shall hereafter die, leaving a widow without means of support other than her daily labor, and an actual net income not exceeding $250 per year, or minor children under the age of sixteen years, such widow shall, upon due proof of her husband's death, without proving his death to be the result of his army service, be placed on the pension roll from the date of the application therefor under this act, at the rate of $8 per month, during her widowhood, and shall also be paid $2 per month for each child of such officer or enlisted man under sixteen years of age; and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid such child or children until the age of sixteen: Provided, That in case a minor child is insane, idiotic or otherwise physically or mentally helpless, the pension shall continue during the life of said child, or during the period of such disability; and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute; and such pensions shall commence from the date of application therefor after the passage of this act: And provided further,

That said widow shall have married said soldier prior to the passage of the said act of June 27, 1890."

The following instructions, dated June 30, 1900, were issued by the Secretary of the Interior to the Commissioner of Pensions with respect to the new law:

"In legal effect no change in meaning is wrought in section 2 by its amendment, the only purpose of which was to remove any remote justification for varying or diverse constructions of the section by the same or succeeding officers of the Pension Bureau, such as were represented to have occurred in the past. Giving attention now to that portion of the section which, in the original and amended forms, is expressed in somewhat different words, it is clearly commanded that each and every mental or physical infirmity of a permanent character, not the result of the applicant's own vicious habits, shall be duly considered, and his right to a pension and the rate thereof shall be determined by the degree to which all of these infirmities, whether minor or serious, when considered together, render him unable to earn a support by manual labor.

"The change in section 3 is in the clause 'a widow without means of support other than her daily labor and an actual net income not exceeding $250 per year.' * * *

"No discretion or judgment can now be exercised by the officers of the Pension Bureau in determining what income, other than from her daily labor, may be possessed by a widow without disqualifying her from receiving a pension under this section. If such income does not exceed $250 per annum, she is not thereby dis-